

COMMITTEE ON SUBORDINATE LEGISLATION

(SIXTH LOK SABHA)

EIGHTEENTH REPORT

(Presented on the 9th April, 1979)



**LOK SABHA SECRETARIAT
NEW DELHI**

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Corrigenda to the Eighteenth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) presented to the House on the 9th April, 1979

<u>S.No.</u>	<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
1.	5	19	6	Ministries/Department	Ministries/ Departments
2.	"	"	9	recommendations	recommendation
3.	10			After para 38 <u>read</u> next para as para 39	
4.	"			After para 40 <u>read</u> next para as para 41	
5.	19	60 (2A)	2	Omit the word 'shall'	
6.	26	19	3rd	from bottom	recommendation
				the words	
7.	27	26		under 'Existing entry' for 'familing' <u>read</u> failing	
8.	41	16	4th	from bottom	ascertained
9.	45	-	5th	or had	or not had
10.	46	-	2	from bottom	to the Order
11.	"	-	20	issued on	had issued on

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1978-79)**

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SECRETARIAT

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

REPORT

I

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sitting held on the 27th February and 21st March, 1979.

3. The Committee considered and adopted this Report at their sitting held on the 6th April, 1979. The Minutes of the sittings which form part of the Report are appended to it.

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

II

THE DRUGS AND COSMETICS (FIFTH AMENDMENT) RULES, 1977 (G.S.R. 697-E OF 1977).

5. While examining the Drugs and Cosmetics (Fifth Amendment) Rules, 1977, published under G.S.R. 697-E in the Gazette of India, Extraordinary, Part II, Section 3(i), dated the 11th November, 1977, it was noticed that in the preamble thereto, the date on which copies of the draft rules were made available to the public had not been mentioned. Without such information it is not possible to determine the net period made available to the public for submitting their suggestions|objections in regard to the draft rules.

7. In this connection, attention of the Ministry of Health and Family Welfare (Department of Health) was invited on the 12th July, 1978 to para 28 of the First Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) which reads as under:—

“It appears that some Ministries are labouring under an apprehension that the condition requiring publication of draft rules for inviting comments|suggestions from the public thereon is merely a formality but it is not so. The Committee feel that it would defeat the very object underlying the condition of publication of draft rules if adequate opportunities are not given to the public to go through the draft rules and offer their comments. It is imperative that the statutory requirements for previous publication of rules are strictly followed both in letter and spirit. The Committee, therefore, recom-

mend that sufficient time should be given to the public to study the draft rules and send their comments thereon before the rules are finalised. To ensure this, Government may, perhaps, do well if they issue some standing instructions that the date of the Gazette in which the draft rules were published and the last date fixed for receipt of public comments thereon and also the date on which the Gazette copies containing the draft rules were made available to the public are specifically mentioned in the preamble to the final rules.”

8. The Ministry of Health and Family Welfare (Department of Health) were asked to state (i) the date on which copies of the draft rules were made available to the public in order to find out the period allowed for sending their comments|suggestions on the draft rules, and (ii) the reasons for not indicating this date in the preamble to the above rules. In their reply dated the 29th July, 1978, the Ministry of Health and Family Welfare have stated as follows:—

“.....notification No. X. 11014|1|77-D&MS dated 11-3-77 was published in the Gazette of India, Extraordinary, Part II, Section III, sub-section (i) as GSR 110(E) dated 11-3-1977. It was mentioned in the notification that the last date of receipt of comments would be thirty days from the date of publication of the notification in the Official Gazette and not from the date on which the copies of the notification became available to the public which is a normal practice. This departure from the normal practice was in view of the urgent nature of the amendment. In view of this position, in the final notification No. X. 11014|1|77—D&MS dated 11-11-77, the date on which the copies were made available to the public was not mentioned.

As regards the date of notification, GSR 110(E) dated 11-3-1977 was issued in the Gazette of India Extraordinary, of 11-3-77. It is therefore, reasonable to presume that copies were available to the public the next day. As copies from Delhi had to reach different parts of India the notification might have reached them by 15-3-1977 at the latest.”

9. The Committee are of the opinion that the Ministry of Health and Family Welfare (Department of Health) should have been more forth-right and specific in replying to the Committee's inquiries. The Committee note that the Drugs and Cosmetics (Fifth Amendment) Rules, 1977 were published in the Gazette on the 11th November, 1977 and the reply of the Ministry with regard to making available the Gazette copies to the public, was communicated on the 29th July, 1978, i.e., after an interval of over

eight months. The Committee are amazed to find that even after such a long time, it had not been possible for the Ministry to state the exact date on which copies of the Gazette containing draft rules were actually made available to the public. The Committee have stressed time and again that information based on presumptions cannot be relied upon by them especially when the exact facts can easily be ascertained. The Committee deprecate the casual manner of approach on the part of the Ministry in replying to their points. The Committee need hardly stress that reply of the Ministry should have been specific and pertinent to the points raised by them.

10. The Committee are not convinced with the plea advanced by the Ministry that a departure was made from the normal practice of giving thirty clear days for inviting objections/suggestions from the public on the draft rules as they related to an amendment of urgent nature. Had the urgency been indeed a real one it should not have taken them eight months to publish the final rules after the publication of draft rules.

11. The Committee cannot but reiterate their earlier recommendation made in para 28 of their First Report (Fourth Lok Sabha) that sufficient time should be given to the public to study the draft rules and send their comments thereon before the rules are finalised. To ensure this, the date on which copies of the Gazette containing the draft rules were made available to the public should invariably be mentioned in the preamble to the rules when they are finally notified in the Gazette.

III

- (a) THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (RECRUITMENT AND CONDITIONS OF SERVICE) FIRST AMENDMENT RULES, 1976 (G.S.R. 263 OF 1976);
- (b) THE CENTRAL GROUND WATER BOARD (GROUP 'A' AND 'B' SERVICES) RECRUITMENT (SECOND AMENDMENT) RULES, 1976 (G.S.R. 1628 OF 1976); AND
- (c) THE CIVILIANS IN DEFENCE SERVICES (REVISED PAY) AMENDMENT RULES, 1976 (S.R.O. 19-E OF 1976).

12. The Department of Parliamentary Affairs (Recruitment and Conditions of Service) First Amendment Rules, 1976 were published in the Gazette of India, Part II, Section 3(i), dated the 28th February, 1976 but were made effective from the 1st January, 1973.

13. Similarly, the Central Ground Water Board* (Group A and Group B Services) Recruitment (Second Amendment) Rules, 1976 were published in the Gazette of India, Part II, Section 3(i), dated the 20th November, 1976 and were made effective from the 11th October, 1975 and the Civilians in Defence Services (Revised Pay) Amendment Rules, 1976 were published in the Gazette of India Extra-ordinary, Part II, Section 4, dated the 12th March, 1976 but were made effective from the 1st January, 1973.

14. The explanatory memorandum affirming that no one will be adversely affected as a result of the retrospective effect given to the rules was not appended to the above rules.

15. Attention of the Department of Parliamentary Affairs, Ministry of Agriculture and Irrigation (Department of Agriculture) and Ministry of Defence was invited to the following recommendation of the Committee made in para 10 of their Second Report (Fourth Lok Sabha) and reiterated in para 102-103 of their Ninth Report (Fifth Lok Sabha):—

“The Committee are not satisfied with the explanations of the Ministries concerned and are of the view that normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication. The Ministries|Departments should take appropriate steps to ensure the publication of rules before they come into force. However, if, in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given, either by way of an explanation in the rules or in the form of a foot-note to the relevant rules to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules.”

16. In their reply dated 19th May, 1977, the Department of Parliamentary Affairs have intimated that the revised rules with the necessary Explanatory Memorandum have been published *Vide* G.S.R. No. 65 dated the 8th January, 1977.

17. The Ministry of Defence (Department of Defence Production) in their reply dated 8th December, 1978 have stated that requisite Explanatory Memorandum has been published in the Gazette *vide* S.R.O. 347 dated the 2nd December, 1978.

18. The Ministry of Agriculture and Irrigation (Department of Agriculture) have in their reply dated the 3rd February, 1978 intimated that the necessary Explanatory Memorandum has been notified *vide* G.S.R. No. 1403 dated the 22nd October, 1977. However, in their earlier note

dated the 4th October, 1977 the Department of Agriculture has stated as under:—

“.....the requisite Explanatory Memorandum affirming that no one will be adversely affected as a result of the retrospective effect being given to the Central Ground Water Board (Group A and Group B Services) Recruitment (Second Amendment) Rules, 1976 was prepared along with the above rules and was got vetted from the Ministry of Law, Justice and C.A. (Legislative Department). Thereafter, the above rules along with the Explanatory Memorandum were sent to the Official Language Commission for Hindi translation. The Explanatory Memorandum to the above rules got detached while it was sent for Hindi Translation to Official Language Commission. As the Explanatory Memorandum did not form a part of the main body of the notification pertaining to the above rules and was to be appended with the above notification, it lost sight of and could not be detected even after issue.

This has since been issued.....”

19. The Committee find that the recommendation of the Committee made in para 10 of their Second Report (Fourth Lok Sabha) regarding avoidance of retrospective effect to the rules, regulations, etc. and giving of Explanatory Memorandum in case where such retrospective effect is unavoidable, had been duly noted by the Department of Parliamentary Affairs and circulated to all Ministries/Department vide their O.M. No. F.32(1)69-R&C dated the 22nd March, 1974 for compliance. The Committee are unhappy to note that the Department of Parliamentary Affairs who circulated the recommendations to all Ministries/Departments for compliance, have themselves failed to pay due attention to it.

20. The Committee are not convinced by the explanation given by the Ministry of Agriculture and Irrigation (Department of Agriculture) for not publishing the Explanatory Memorandum alongwith the rules that it got detached while it was sent for Hindi translation and therefore, it was lost sight of and could not be detected even after the issue of the Central Ground Water Board (Group 'A' and 'B' Services) Recruitment (Second Amendment) Rules, 1976. The Committee have time and again pointed out that the responsibility of the Ministry|Department does not cease with the sending of notification to the Press for printing. After it is published in the Gazette, it is the duty of the Ministry|Department concerned to verify whether the same has been correctly printed and to issue corrigendum thereto if necessary. The Committee regret that in the present case, the Ministry have published the Explanatory Memorandum only after the Committee had pointed it out to them.

21. The Committee deprecate the carelessness on the part of the Department of Parliamentary Affairs and Ministries of Agriculture and Irrigation (Department of Agriculture) and Defence in the above cases and desire them to be careful in such matters in future. The Committee desire that some procedure should be devised whereby the recommendations of the Committee are carefully noted and complied with and not lost sight of.

IV

INDIAN MUSEUM RECRUITMENT RULES, 1977 (G.S.R. 194 OF 1977)

22. In the Schedule to the Indian Museum Recruitment Rules, 1977 published under G.S.R. 194 in the Gazette of India, Part II, Section 3(i) dated the 12 February, 1977, there is one post each of Assistant Keeper (Anthropology), Photographer, Dark Room Assistant, Curator (Art) and Curator (Anthropology) but in column 11 against these posts, it has been stated that 50 per cent [75 per cent in the case of Curator (Art)] of the posts will be filled by promotion, failing which by direct recruitment.

23. The Ministry of Education and Social Welfare (Department of Culture) were asked to state as to how 50 per cent or 75 per cent of these posts could be filled by promotion or direct recruitment when the total number of posts is only one in each category. In order to remove this anomaly the Ministry were also asked to state whether they had any objection to amend the rules suitably.

24. In their reply dated the 11th May, 1978 the Department of Culture stated as follows:—

- | | |
|-------------------------------------|---|
| 1. Assistant Keeper (Anthropology). | This post, according to the recruitment rules, has to be filled up 100% by promotion. As such, no anomaly exists in this case. |
| 2. Curator (Anthropology) | It is true that there is only one post of Curator (Anthropology) and according to existing rules 50% of the post is to be filled by promotion. It has been intended that the first vacancy will be filled up by promotion and the next vacancy will be filled up by direct recruitment. As such though in the face of it may appear incongruous, there is no real anomaly in the recruitment rules. |
| 3. Photographer and Dark-room Asst. | The explanation for these posts is also the same as stated in respect of Sl. No. 2 above. |
| 4. Curator (Art) | According to the existing Recruitment Rules only 25% of this post is to be filled up by promotion. This means that the first 3 vacancies, when these occur, will be filled up by direct recruitment and the fourth |

will be filled by promotion. However, the matter was reconsidered by the Board of Trustees at its meeting held on 16-3-78. The Resolution passed by the Board is quoted below :—

“Resolved that the post of Curator (Art), the Recruitment Rules be amended in order to read “50% by direct recruitment and 50% by promotion.”

In pursuance of the above Resolution necessary action to amend col. 11 of the Recruitment Rules for the post of Curator (Art) is being taken, and the position will be intimated to the Lok Sabha Secretariat, in due course.

25. In their further reply dated the 29th August, 1978 the Department stated as under:—

“This Department has no objection to amend the existing entry in column 11 in respect of the posts of Curator (Anthropology), Photographer and Dark Room Assistant of the Schedule to the Indian Museum Recruitment Rules, 1977, as follows:—

Existing entry

Proposed entry

“50% by promotion failing which by direct recruitment.” “50% by promotion 50% by direct recruitment.

(The first vacancy in the post will be filled up by promotion and the next vacancy will be filled up by direct recruitment and so on.)”

26. The Committee note with satisfaction that, on being pointed out, the Ministry of Education and Social Welfare (Department of Culture) have agreed to amend the Indian Museum Recruitment Rules, 1977 as desired. The Committee approve the following entry proposed by them in substitution of the existing entry in column 11 in respect of the posts of (i) Curator (Anthropology), (ii) Photographer; and (iii) Dark Room Assistant in the Schedule appended to the aforesaid Rules and desire the Ministry to issue the proposed amendment at an early date:

Existing entry

Proposed entry

“50% by promotion failing which by direct recruitment.” “50% by promotion 50% by direct recruitment.

(The first vacancy in the post will be filled up by promotion and the next vacancy will be filled by direct recruitment and so on.)”

27. The Committee further note that in respect of the post of Curator (Art) also, the Ministry have since decided to amend the existing entry in column 11 of the Schedule to the Recruitment Rules in order to read ‘50 per cent by direct recruitment and 50 per cent by promotion.’ The Committee desire the Ministry to issue the amendment with the clarificatory note as proposed to be indicated against the posts of (i) Curator (Anthropology), (ii) Photographer, and (iii) Dark Room Assistant, at an early date, if not already done.

HIGH SPEED DIESEL OIL AND LIGHT DIESEL OIL (RESTRICTION ON USE) ORDER, 1974
(G.S.R. 263-E OF 1974)

'A'

28. In clause 2 of the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974, published under G.S.R. 263-E in the Gazette of India—Part II, Section 3(i) dated the 10th June, 1974, definition of High Speed Diesel Oil and Light Diesel Oil has been given by reference to the Central Excisces and Salt Act, 1944. The Committee on Subordinate Legislation have recommended a number of times that legislation by reference should be avoided.

29. The Ministry of Petroleum and Chemicals with whom the matter was taken up, have, in their reply dated the 14th February, 1978, stated as follows:—

'2. A draft Order to be issued on the subject has ben shown to the Ministry of Law, Justice and Company Affairs. They have suggested that it be revised. We have since done it, and referred the case back to the Law Ministry.

3. It will be possible to issue the amendment Order as soon as we get the clearance of Law Ministry to the draft* * *

30. In spite of two subsequent reminders, the Ministry have not intimated whether the amendment has been issued or not.

31. The Committee are unhappy to note that the communications addressed to the Ministry of Petroleum and Chemicals to ascertain whether the amendments to the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974 had been issued or not had not been paid due attention and that their reply in this regard is still pending. The Committee desire that this case of delay and scant regard shown to their communications be brought to the notice of the Minister of Petroleum and Chemicals and his reactions communicated to them for their information.

32. The Committee, however, desire the Ministry to finalise the proposed amendments to the above Order, if not already done, immediately on the lines as recommended by the Committee in similar cases on earlier occasions and issue them without any further delay.

33. Clause 4 of the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974 provides as follows:—

'4. *Power of entry, search and seizure*—

Any police officer not below the rank of a Head Constable, or any other officer of Government of or above an equivalent rank authorised in

this behalf by the State Government, may with a view to securing compliance with this Order or to satisfying himself that this Order or any order made thereunder has been complied with,

- (a) enter and search any place, premises or vessel, which, the officer has reason to believe, has been, or is being, or is about to be, used for the contravention, of this Order or any order made thereunder;
- (b) seize stocks of High Speed Diesel Oil or Light Diesel Oil in respect of which he has reason to believe that a contravention of the provisions of this Order or of any order made thereunder has been or is being, or is about to be, made.'

34. The Ministry of Petroleum and Chemicals were asked to state whether they would have any objection to provide for safeguards such as presence of witness at the time of search and preparation of inventories of seized articles and supplying a copy thereof to the person concerned. In their reply dated the 10th November, 1975 the Ministry stated as follows:

'.....action has already been taken and an amendment Order to this effect has been sent to the Government of India Press on 27th October, 1975 for publication in the Gazette of India' (Appendix-II)

35. The Committee note with satisfaction that, on being pointed out, the Ministry of Petroleum and Chemicals have since amended the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974 to the effect that the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure requiring the presence of witness at the time of search and preparation of inventories of seized articles and supplying a copy thereof to the person concerned shall apply to searches and seizures made under the above Order vide their Notification No. G.S.R. 2734 published in the Gazette of India dated the 29th November, 1975.

VI

THE HEAVY VEHICLES FACTORY, AVADI (GROUP 'A' POSTS) RECRUITMENT (AMENDMENT) RULES, 1977 (S.R.O. 369 OF 1977).

36. Sub-rule (2) of Rule 1 of the Heavy Vehicles Factory, Avadi (Group 'A' Posts) Recruitment (Amendment) Rules, 1977 published under S.R.O. 369 in the Gazette of India-Part II, Section 4 dated the 29th October, 1977 provided for the giving of retrospective effect to the Rules from the 4th December, 1976.

37. In the Explanatory Memorandum appended to the Rules, it was stated that a discrepancy relating to the qualifications in respect of recruit-

ment of Managers was observed after the publication of the original Rule in 1976. However, no mention was made in the Memorandum as to whether the retrospective operation of the rules would affect any one adversely or not.

38. In their reply dated the 2nd February, 1979, the Ministry of Defence (Department of Defence Production) with whom the matter was taken up have stated that it has been decided not to give retrospective effect to the said rules. The Ministry have forwarded a copy of the amendment dispensing with the retrospective operation of the rules which they had sent for publication in the official Gazette.

The Committee note with satisfaction that, on being pointed out, the Ministry of Defence (Department of Defence Production) have since issued an amendment to the Heavy Vehicles Factory, Avadi (Group 'A' Posts) Recruitment (Amendment) Rules, 1977, dispensing with the retrospective operation given to these rules.

VII

THE PREVENTION OF FOOD ADULTERATION (FIFTH AMENDMENT) RULES, 1977 (G.S.R. 732-E OF 1977).

(A)

40. While examining the Prevention of Food Adulteration Fifth Amendment) Rules, 1977 published in the Gazette of India Extraordinary, Part I—Section 3(i) dated the 5th December, 1977, it was noticed that copies of the Gazette containing the draft rules were made available to the public on 16-11-1977, and suggestion|objections on the draft rules were invited by 26-11-1977, thus allowing only 10 days to the public to send their suggestions| objections as against the minimum period of 30 days as recommended by the Committee on Subordinate Legislation.

The Ministry of Health and Family Welfare (Department of Health) who were asked to state the reasons for giving less than 30 days to the public for sending their suggestions|objections, have stated as under in their reply dated the 2nd August, 1978:—

“The Cabinet at its meeting held on 18-8-77, while discussing a note from the Ministry of Civil Supplies and Cooperation regarding the framework of a national edible oil policy, decided that Rule 44 of the Prevention of Food Adulteration Rules should be immediately amended, to permit sale of blended edible oils provided that the products were appropriately labelled and were not injurious to health. This was considered necessary to tide over the acute shortage of mustard

oil. Moreover, the blending of mustard oil with imported rapeseed oil was expected to bring down the price as the imported, rapeseed oil was comparatively cheaper and was available in adequate quantities. Accordingly, it became necessary to relax Rule 44 of the Prevention of Food Adulteration Rules. But for this, as the supply position was so unsatisfactory the public would have been forced to face scarcity of edible oil or pay higher prices for the available edible oils. Hence it was felt that it would be in the public interest to give only 10 days notice instead of the customary 30 days notice for eliciting public opinion. In short the formal approval to mix the two oils, namely rapeseed oil and mustard oil, had to be given utmost urgency. The Notification of 5-12-1977 had the desired effect on the edible oil market both in terms of availability and in terms of price level. As the Committee on Subordinate Legislation is also very much concerned with the availability of edible oil at reasonable prices to the public at large, it is hoped that the Committee would condone the action taken in reducing the period of notice from 30 days to 10 days. It may be seen that the notification gives protection only when the blending or admixture of rapeseed oil with mustard oil is done under the supervision of Government of India in the Ministry of Civil Supplies or their authorised agents. Further, the public is also made aware of the fact of admixture, as the proportion of the two oils is indicated on the label of the container. The Ministry is advised that there is no health hazard involved in the blending of rapeseed oil with mustard oil.

42. The Committee find from the reply of the Ministry of Health and Family Welfare that the plea of urgency in public interest as advanced by them for reducing the period from 30 days to 10 days for inviting suggestions/objections from the affected persons on the draft rules is not borne out by facts. According to the Ministry's own reply the Cabinet had decided to amend Rule 44 of the Prevention of Food Adulteration Rules on the 8th August, 1977 immediately. The Committee observe that the draft rules were published in the Gazette on the 16th November, 1977 i.e. after a period of more than three months of the Cabinet's decision. The Committee feel that had the Ministry been a little more alert and vigilant and had taken immediate steps to implement the Cabinet's decision, the minimum required period of 30 days could have easily been given to the public to submit their suggestions/objections on the draft rules. The Committee exhort the Ministry to be prompt and alert in handling such important matters in future.

(B)

43. Proviso (c) to Rule 44 of the Prevention of Food Adulteration Rules, 1955 as inserted by the Prevention of Food Adulteration (Fifth Amendment) Rules, 1977 reads as under:—

‘(C) the quality of imported rapeseed oil and the mustard oil in the admixture conforms to the standards prescribed by the Central Government.’

44. The Ministry of Health and Family Welfare (Department of Health) were asked to state whether they had any objection to indicating in the above rules the number and the date of the Gazette Notification in which the standards of quality prescribed by the Central Government had been published. In their reply dated the 2nd August, 1978, the Ministry stated as follows:—

‘While the specifications of the mustard oil, rapeseed oil are prescribed in item A. 17.06 of Appendix B to the Prevention of Food Adulteration Rules, 1955, the standards of the imported rapeseed oil have been specified in the Ministry’s circular letter No. P. 15016/14/77-PH(F&N), dated the 29th August, 1977. Steps are afoot to notify them for the general information of the public, through an amendment to the Prevention of Food Adulteration Rules, 1955.’

45. The Committee note with satisfaction that, on being pointed out, the Ministry of Health and Family Welfare (Department of Health) have agreed to notify the standards of quality of the imported rapeseed oil through an amendment to the Preventive of Food Adulteration Rules, 1955. The Committee desire the Ministry to issue the proposed amendment to the above Rules at an early date if not already done.

VIII

IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN PARA 65 OF THE TWENTIETH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING GIVING OF RETROSPECTIVE EFFECT TO THE ‘ORDER’ FRAMED UNDER VARIOUS ACTS OF PARLIAMENT [(i) THE APPRENTICESHIP RULES, 1971 (G.S.R. 1426 OF 1971) AND (ii) THE COAL MINES LABOUR WELFARE FUND (1ST AMENDMENT) RULES, 1973.

(G.S.R. 504 OF 1973)

46. The Apprenticeship Rules, 1971, were published in the Gazette of India, Part II, Section 3(i) dated the 2nd October, 1971, but were made effective from the 1st August, 1971. The Apprenticeship Act, 1961, under which the above rules had been framed, did not confer any power on Government for giving of retrospective effect to such rules.

47. Similarly, the Coal Mines Labour Welfare Fund (First Amendment) Rules, were published in the Gazette of India, Part II, Section 3(i) dated the 12th May, 1973, but were brought into force from the 25th August, 1972. The Coal Mines Labour Welfare Fund Act, 1947 does not empower the Government to give retrospective effect to rules framed thereunder.

48. The matter was taken up with the Ministry of Labour and their attention was invited to paragraph 49 of the Seventh Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) where the Committee had noted the following observation of the Attorney-General in this regard:—

“The Legislature may make a law with retrospective effect. A particular provision of a law made by the Legislature may operate retrospectively if the law expressly or by necessary intendment so enacts. A law made by the Legislature may itself further empower subordinate legislation to be operative retrospectively. Without such a law, no subordinate legislation can have any retrospective effect.....”

49. After considering the reply of the Ministry of Labour, the Committee in para 65 of their Twentieth Report (Fifth Lok Sabha) observed as under:—

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

50. In their action taken note dated the 1st and 17th September, 1977 on the above recommendation, the Ministry of Labour have stated as under:—

(i) *The Apprenticeship Rules, 1971.*

“...The said rules, effecting the upward revision of stipend for apprentices with effect from 1-8-71, were notified in the Gazette of India through Notification No. 13(1)|71-AP

dated 16-8-71 (GSR 1426), which was actually published in the Gazette on 2-10-71.

The Committee on Subordinate Legislation (Fifth Lok Sabha) in its report under reference observed that the retrospective effect given to the aforesaid Order was without any authorisation to that effect in the parent statute, viz., the Apprentices Acts, 1961 and therefore, the Committee had desired that the Ministry should either give effect to the 'Order' in question from the date of its publication in the Gazette, or, alternatively, take steps to incorporate a provision in the relevant Act empowering Government to give retrospective effect to the 'Order'.

- .. It may be stated that the stipend at the increased rates had already been paid by employers to apprentices with effect from 1-8-71 and in this respect no objection was received from any employer. Even if the payments at the increased rates of stipend were given effect to from 2-10-71, the date of publication of the Notification in the Gazette, at this late stage, it would be practically impossible for the employers to effect recovery of the excess amount already paid to the apprentices for 2 months (from 1-8-71 to 1-10-71) at the rate of Rs. 20 per month per apprentice as the apprentices had already completed their training and left the establishments in which they received their training long ago.

In the circumstances, it may kindly be appreciated that no useful purpose would be served at this stage by giving effect to the 'Order' in question from the date of its publication in the official Gazette or by incorporating a provision in the Apprentices Act, 1961, empowering the Government to give retrospective effect to the said order."

(ii) *The Coal Mines Labour Welfare Fund (1st Amendment) Rules, 1973:*

".....section 10 of the Coal Mines Labour Welfare Fund Act, 1947 enjoins that the Central Government, may by notification in the Official Gazette, and subject to the condition of previous publication, make rules to carry into effect the purposes of the said Act. Admittedly, the Coal Mines Labour Welfare Fund Act, 1947 and the Coal Mines Labour Welfare Fund Rules, 1949 framed thereunder do not, contain any specific provision conferring powers on the Executives to amend the Rules with retrospective effect. But in view of the unavoidable circumstances in this particular case, the necessity to amend the rule 3(1) (a) (i) of the Coal Mines

Labour Welfare Fund Rules, 1949 had arisen as the then Joint Secretary who was appointed Chairman of the Coal Mines Labour Welfare Fund Advisory Committee was promoted as Additional Secretary in this Ministry with effect from 25-8-1972. The said rule as it stood then did not provide for appointment of Additional Secretary as Chairman of the Advisory Committee. The Government's intention in doing so was only to continue him as Chairman of the said Committee. The necessity of previous publication inviting objections and suggestions, if any, from the public till the final issue of notification involves a time lag. The delay in this case has thus been more procedural. Moreover, as already advised by the Law Ministry, an Explanatory Memo. indicating the reasons in which it had become necessary to give retrospective effect as also the fact that no one could be adversely affected by the amendment coming into force with effect from 25-8-72—the date on which Shri N. P. Dube took over as Addl. Secretary was also attached to the notification dt. 3-5-73.....

Furthermore, Shri N. P. Dube, in his capacity as the Chairman of the Advisory Committee, in pursuance of amended clause 3(1)(a)(i) of the Rules, had already presided over the Meeting of the Coal Mines Labour Welfare Fund Advisory Committee held at Dhanbad on 10-10-72 and in case rule 3(1)(a)(i) of the Coal Mines Labour Welfare Fund Rules 1949, had not been amended with retrospective effect, the decisions taken by the Advisory Committee headed by Shri N. P. Dube and implemented by the Government as also other actions approved by him at the said meeting in the capacity of his being the Chairman of the Advisory Committee of Coal Fund could well be questioned in the eyes of law. Hence to give effect to the order in question from the date of publication of the Gazette (12-5-73) in the official gazette is neither feasible nor adviseable at this stage. It is, however, ensured that in future such recurrence would be avoided."

51. The Committee are not convinced with the reply of the Ministry of Labour in respect of the Coal Mines Labour Welfare Fund (First Amendment) Rules, 1973. The Committee wish to stress again that mere appending of an Explanatory Memorandum to the rules to justify the retrospective effect, did not do away with the legal necessity of amending the parent Act so as to vest in the Government the powers to frame rules thereunder with retrospective effect.

52. With regard to the Apprenticeship Rules, 1971, the Committee note from the reply of the Ministry of Labour that stipend at increased rates has

already been paid by the employers to the apprentices with effect from the 1st August, 1971 and even if the retrospective effect given to the rules was removed, it would be impossible for the employers to recover the excess of the stipends paid to the apprentices who had already completed their training and left the institutions. Having regard to the practical difficulties expressed by the Ministry, the Committee do not insist, as an exceptional case, upon issuing amendment to do away with the retrospective effect given to the rules or amending the parent Act so as to vest in Government the power to frame rules with retrospective effect. The Committee once again urge upon the Ministry of Labour to exercise due care in such matters in future and make it doubly sure that no rules|regulations|orders etc. are given retrospective effect without a specific authorisation therefor in the parent Act.

IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN
PARAS 17—20 OF THE NINTH REPORT OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (SIXTH LOK
SABHA) REGARDING THE OIL INDUSTRY (DEVELOP-
MENT) RULES, 1975
(G.S.R. 160-E OF 1975)

53. Rule 24(2) of the Oil Industry (Development Rules, 1975 reads as under:—

“24(2). The Board may write off losses or waive recoveries up to Rs. 25 lakhs in each case. Write off of losses or waiver of recoveries beyond this amount shall be done with the prior approval of the Central Government.”

54. The Committee on Subordinate Legislation which examined the above Rules at their sitting held on the 17th May, 1975 desired to know the precise legal authority under which the Board had been empowered to write off losses or waive recoveries upto Rs. 25 lakhs in each case.

55. The Ministry of Petroleum and Chemicals with whom the above matter was taken up, in their reply, stated as under:—

“The precise legal authority under which the Board has power to write off or waive losses has to be derived from the combined operation of Sections 6(1), 6(2), 31(1) and 31(2)(g) of the Oil Industry Development Act, 1974. The Oil Industry Development Board is, having regard to its functions under Section 6, a development-cum-financial corporation. By virtue of section 6(1) and (2) of the Act, the main function of the Board is to grant loans and financial assistance for the development of the oil industry. By virtue of section 6(6) of the Act, this function of granting loans, advances and other financial assistance carries with it the power to ‘do all such things as may be incidental to or consequential upon the dis-

charge' of that function. The power to write off or waive losses is incidental to the function of granting loans and financial assistance because no individual or corporation engaged in granting loans can eliminate altogether the possibility of some of the debts due to its becoming bad debts. Thus, by virtue of section 6(6) of the Act itself, the Board had the power to write off losses or waive recoveries. But as the functions of the Board have to be discharged subject to the rules made under the Act (*vide* opening portion of section 6(1) of the Act) and as according to the scheme of the Act the Board is to function subject to the control of the Central Government, it is permissible for the Central Government by relying upon section 31(1) to make rules imposing restrictions on the powers of the Board so that the purposes of the Act are properly carried out. From this point of view rule 24(2) can be regarded as, in substance, imposing a restriction on the general power of the Board under section 6(6) to write off losses and waive recoveries. Alternatively, Rule 24(2) can be justified with reference to section 31(2) (g) read with section 6(6) and section 31(1) of the Act by holding that the powers to incur expenditure derived from rules relating to section 31(2)(g) carry with them the incidental power of writing off losses and waiving recoveries and the same can be regulated or restricted by rules under section 31(1) for carrying out properly the purposes of the Act. Provisions similar to rule 24(2) occur in rules relating to other Boards also and are in accordance with standard practice, *vide* rule 33(2) of the Cardamom Rules, 1966 made under section 33 of the Cardamom Act, 1965. The limit of Rs. 25 lakhs was considered an operational need for the proper day-to-day functioning of the Board."

56. At their sitting held on the 31st March, 1978, the Committee heard oral evidence of the representatives of the Ministries of Petroleum and Chemicals and Law, Justice and Company Affairs (Department of Legal Affairs) in regard to the provisions of Rule 24(2) empowering the Oil Industry Development Board to write off losses or waive recoveries upto Rs. 25 lakhs in each case.

57. After considering the matter in all aspects, the Committee in paras 17 to 20 of their Ninth Report (Sixth Lok Sabha) recommended as under:—

"The Committee observe that under Rule 24(2) of the Oil Industry (Development) Rules, 1975, the Oil Industry Development Board may write off losses or waive recoveries up to Rs. 25 lakhs in each case. Neither the Ministry of Petroleum

& Chemicals nor the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) have been able to point out any express provision in the parent Act—the Oil Industry Development Act, 1974—which confers or authorises the conferring of such a power on the Board. According to Government, the power of write-off or waiver is incidental to the Board's function of granting loans and advances. The Committee are not satisfied with this explanation. In their opinion, the power of waiver of recoveries, as contradistinguished from the formal power of writ-off, is a substantial power, and not just incidental to or consequential upon the Board's function of granting loans and advances. The Committee feel that in view of the huge public funds involved, the power of waiver should have an express authorisation from the parent law. The power of write-off may flow from the rules, but even in the case of write-off, there should be clear guidelines indicating the circumstances in which the power of write-off shall be exercised.

The Committee further feel that the Board's power of write-off or waiver should not exceed rupees twenty lakhs in a case. Write-off of losses or waiver of recoveries beyond this amount should have the prior approval of the Central Government.

It has *inter alia* been argued by the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) that if the suggestion of the Committee on Subordinate Legislation to expressly provide for the power of waiver in the parent Act is accepted, the same would necessitate amendment to all the statutes of a similar nature dealing with Development-cum-Financial Corporations. In the opinion of the Committee, this difficulty is not an insurmountable one. As conceded by the representative of the Department of Legal Affairs in evidence, to meet this difficulty, a general statute for the purpose can be brought in, with the names of the different Acts constituting Development-cum-Financial Corporations in the Schedule to the Bill.

The Committee desire the Ministry of Petroleum and Chemicals to take early steps for the amendment of the Rules and the Act in question, in the light of the observations of the Committee in paras 17—19 of the Report."

58. In their action-taken note dated the 6th September, 1978 on the above recommendations, the Ministry of Petroleum, Chemicals & Fertilizers (Department of Petroleum) have stated as under:—

"this Department agrees to the amendment of sub-rule (2) in Rule 24 in the Oil Industry (Development) Rules, 1975,

as desired. Accordingly, the sub-Rule has been amended (copy endorsed) which has been vetted by the Ministry of Law. It is requested that the draft amendment of the sub-Rule may kindly be seen for comments/concurrence before issue."

59. The Committee note with satisfaction that the Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) have agreed to substitute sub-rule (2) of Rule 24 of the Oil Industry (Development) Rules, so as to eliminate the power of waiving recoveries vested in the Board and to restrict the power of writing-off losses to Rs. 20 lakhs in each case, as given below:—

"(2) The Board may write-off losses upto Rs. 20 lakhs in each case. Write-off of losses beyond this amount shall be done with prior approval of the Central Government."

60. The Committee further note that the Ministry have also agreed to lay down and notify guidelines for the Board for writing-off losses in the form of a new sub-rule (2A) viz.,—

"(2A) While writing off losses under sub-rule (2), the Board shall shall have regard to the following, namely:—

- (i) the loss does not disclose a defect in the rules;
- (ii) the loss does not disclose any defect in complying with the stipulations specified by the Board;
- (iii) there has not been any serious negligence on the part of an oil industrial concern to which the Board had granted loan and its realisation requires some legal or administrative action;
- (iv) the loss is not attributable to any serious lapse on the part of any employee of the Board and in cases where the loss is not realisable from such employee/functionary;
- (v) if the loss of any property acquired by an oil industrial concern with the assistance of the Board is due to fire, flood, earthquake or any other natural cause, it has been ensured that the facts were promptly reported, and proved, to the entire satisfaction of the Board that the circumstances aforesaid were beyond the control of the said oil industrial concern.
- (vi) if the loss is due to any expenditure on all or any of the measures specified in section 6, a detailed investigation has been carried out by the Board to ascertain the causes thereof and to ensure that the loss is not due to lack of proper technical survey in assessing the technical soundness and

viability of the measure or any other lapse on the part of the oil industrial concern executing such measure.”

61. The Committee approve the proposed amendment and the guidelines and desire the Ministry to issue them at an early date.

X

IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN PARA 70 OF THE TWELFTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) REGARDING THE AIRCRAFT (THIRD AMENDMENT) RULES, 1975 (G.S.R. 2386 OF 1975).

62. Sub-rule (1) of rule 135B of the Aircraft Rules, 1937, as substituted by the Aircraft (Third Amendment) Rules, 1975, reads as under:—

“(1) No change shall be made in fares, rates and charges or in classifications, rules, regulations, practices or services affecting such fares, rates and charges or value of the services thereunder specified in any effective tariff including any change in the rates, terms or conditions of the commission payable to the passenger or cargo sales agents except after previous approval by the Director-General.”

63. The words ‘except after previous approval of the Director-General’ appearing in the sub-rule seem to confer on the Director-General the power to change fares, rates and charges etc. It was felt that this was a substantive provision for which there should be an express authority in the parent Act *viz.* the Aircraft Act, 1934 (No. 22 of 1934).

64. The Ministry of Tourism and Civil Aviation were accordingly asked to specify the section of the parent Act which expressly conferred such a power on the Director-General or authorised the Government to confer this power by rules. In their reply dated the 23rd November, 1976, the Ministry stated as under:—

“.....sub-rule (1) of rule 135B of the Aircraft Rules, 1937 confers power on the Director-General of Civil Aviation to approve changes if any in the fares etc. which have already been filed with the DGCA under rule 135(1), and *not the power to change the fares etc.* It may be stated that tariffs to be applied by the air carriers are primarily agreed to by the IATA subject to approval of Governments. The intent and purpose of rule 135 is that an air carrier operating air transport services to and from India in accordance with rule 134 should file with the DGCA a tariff showing fares, rates and charges for air transportation to and from India which the

DGCA has power to reject under sub-rule (3). These tariffs are subject to change from time to time by the IATA. Rule 135B(1) ensures that any of such changes adopted by IATA should be filed with the DGCA for approval by the air carriers operating air transport services to and from India. This power to approve also flows from Clause (aa) of sub-section (2) of section 5 of the Aircraft Act, 1934 under which the Central Government has the power to make rules to cover regulation of air transport services."

65. Attention of the Ministry was, thereafter invited to sub-rule (3) of rule 135B, which specifically stipulates that the Director-General may, for reasons to be recorded in writing, revise or disallow any changes. The amended rule 135B thus in effect empowers the Director-General to exercise a control over fares, rates and charges or in classifications, rules, regulations, practices or services thereunder specified in any effective tariff including any change in the rates, terms or conditions of the commission payable to the passenger or cargo sales agents. Clause (aa) of sub-section (2) of section 5 of the Aircraft Act, 1934, referred to by the Ministry as the authority does not seem to expressly confer such a power on the Director-General. The Ministry were accordingly asked to state if they had any objection to amending the parent Act to have an express authorisation for the above power.

66. In their reply dated the 13th March, 1978, the Ministry stated as under:

"...in the field of international air transport, the International Air Transport Association (IATA), which is a body of airlines operating international scheduled air services, has established machinery for adopting fares, rates etc. and for laying down the terms and conditions of the commission payable to the passenger or cargo sales agents and carriage of passenger or cargo. This machinery is recognised by the Government of India and several other Governments including the Government of U.S.A. After IATA adopted fares, rates, etc. through this machinery in the form of resolutions, these resolutions are submitted by the airlines who are members of IATA to their respective governments for approval as the resolutions do not become effective unless and until they are approved by all concerned governments. The approval or for that matter, disapproval of these resolutions is given by the government in its inherent power as a sovereign body. Any changes in these tariffs have also to be effective and applicable. Further, bilateral agreements concluded by governments for operation of international air services by their airlines contain a clause

on application of tariffs by the airlines, *i.e.* fares, rates, commissions payable etc. which also provides for approval of such tariffs by the aeronautical authorities of the two governments. In case of India, the aeronautical authority is the Director General of Civil Aviation. Such clauses also empower the aeronautical authorities to disapprove the tariffs.

In view of the above, it is felt that it may not be necessary that the power to approve or disapprove tariffs should be conferred expressly on the Director General of Civil Aviation. In this connection, it may be mentioned that the Ministry of Law were earlier consulted in the matter and they were of the opinion that the subject power is vested in the Central Government under clause (aa) of sub-section (2) of section 5 of the Aircraft Act, 1934. However, if the Committee on Subordinate Legislation have strong views in the matter, it may again be taken up with the Ministry of Law."

67. The Committee in para 70 of their Twelfth Report (Sixth Lok Sabha) observed as under:—

"The Committee note from the reply of the Ministry of Tourism and Civil Aviation that the approval or for that matter, disapproval of fares, rates, etc. as adopted by the International Air Transport Association (IATA) is being given by Government in their inherent power as a sovereign body. The Ministry have also referred to the opinion of the Ministry of Law that the power to approve flows from Clause (aa) of sub-section (2) of Section 5 of the Aircraft Act, 1934. The Committee, however, observe that under that Clause, Government are empowered to frame rules for regulation of air transport service. In the opinion of the Committee, it does not give an express authority to the Director-General to approve, disapprove or revise the fares etc. of the tariffs. As this is in the nature of a substantive power, the Committee feel that authority therefor must expressly flow from the parent Act itself. The Committee, therefore, desire the Ministry to bring an amending legislation to provide for specific authority in the Aircraft Act for this purpose at an early date."

68. A copy of the Report was forwarded to the Ministry of Tourism and Civil Aviation for implementing the recommendation of the Committee.

69. On the 21st February, 1979 the Ministry of Tourism and Civil Aviation forwarded the opinion of the Ministry of Law, Justice and Com-

pany Affairs (Department of Legal Affairs) in the matter. Relevant extracts from the opinion of the Ministry of Law are reproduced below:

“Committee on Subordinate Legislation opined that the power to approve the fares thus agreed upon by the members of the International Air Transport Association is a substantive power. Therefore, it should have been conferred under the Parent Act on the Director-General of Civil Aviation that under the rules as it stands now. Therefore, the question is whether the power to approve the tariffs already agreed upon by the members of the International Air Transport Association is a substantive power or only a procedural one.

In other words, the power to approve rates of charges, fares etc. amounts to an essential legislative power or not. If so, whether it can be delegated to the executive or rule-making authority. In this context it is relevant to note the observations of the Supreme Court in *N. K. Pappiah and Sons V. Excise Commissioner* (AIR 1975 SC 1007) which are as follows:

‘The power to fix the rate of excise duty conferred on the Government by section 22 is valid. The dilution of Parliamentary watch-dogging of delegated legislation may be deplored but, in the compulsions and complexities of modern life, cannot be helped.’

* * * * *

‘Section 71 of the Act which provides for the rule-making power imposes the necessary check upon the wide power given to the government to fix the rate. The requirement of laying of rules before the legislature is control over delegated legislation. The legislature may also retain its control over its delegate by exercising its power of repeal.’

Sections 14 and 14A of the Act which provide that the rule framed under the Act shall be published and laid before the Parliament is a necessary check on the delegate within the meaning of the observations made by the Supreme Court referred to above. Therefore, we reiterate our view that power to approve the rates of charges, fares etc. need not be conferred under the main statute and it can also be made under the rules.”

70. The Committee are not convinced by the arguments advanced by the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs). The Committee observe that the Ministry of Law have referred to a decision of the Supreme Court in support of the view that the powers conferred on the Director General of Civil Aviation are within the permissible limits of delegated legislation. However, the decision of the Supreme Court refers to the power of delegation with regard to fixation of the

rate of excise duty under the Karnataka Excise Act on the ground, inter alia, that the Act provides for laying of rules before the legislature which has the power of even repealing the rules. The Committee find that in the present case, the question is not of conferment of power of delegation but it concerns with the power of the Director-General to approve or disapprove or revise the fares of the tariffs. It appears to the Committee that the Ministry have equated the power of approval or disapproval of the Director-General with the power to fix the rates. The Committee, therefore, feel that the decision of the Supreme Court quoted by the Ministry is not wholly appropriate in the present case.

71. The Committee are aware that there are provisions in the Aircraft Act, 1934 for laying of the rules/regulations framed thereunder before Parliament with usual provision of modification or amendment or annulment thereof by the Houses of Parliament.

72. Although the Committee on Subordinate Legislation do not exercise powers as contemplated by the Act yet it is a functionary of the House and exercise the right to examine rules/regulations framed under various Acts and recommend changes therein on behalf of the House.

73. The Committee, therefore, reiterate their earlier recommendation and desire that the Ministry of Tourism and Civil Aviation should take suitable steps immediately to amend the Aircraft Act, 1934 as suggested by them in para 70 of their Twelfth Report (Sixth Lok Sabha).

SOMNATH CHATTERJEE,

NEW DELHI;
The 6th April, 1979

.. .. . Chairman, ..
Committee on Subordinate Legislation.

APPENDIX I

(Vide para 4 of the Report)

Summary of main Recommendations/Observations made by the Committee

Sl. No.	Para	Summary
(1)	(2)	(3)
1 (i)	9	The Committee are of the opinion that the Ministry of Health and Family Welfare (Department of Health) should have been more forthright and specific in replying to the Committee's inquiries. The Committee note that the Drugs and Cosmetics (Fifth Amendment) Rules, 1977 were published in the Gazette on the 11th November, 1977 and the reply of the Ministry with regard to making available the Gazette copies to the public, was communicated on the 29th July, 1978, <i>i.e.</i> , after an interval of over eight months. The Committee are amazed to find that even after such a long time, it had not been possible for the Ministry to state the exact date on which copies of the Gazette containing draft rules were actually made available to the public. The Committee have stressed time and again that information based on presumptions cannot be relied upon by them especially when the exact facts can easily be ascertained. The Committee deprecate the casual manner of approach on the part of the Ministry in replying to their points. The Committee need hardly stress that reply of the Ministry should have been specific and pertinent to the points raised by them.
1 (ii)	10	The Committee are not convinced with the plea advanced by the Ministry that a departure was made from the normal practice of giving thirty clear days for inviting objections/suggestions from the public on the draft rules as they related to an amendment of urgent nature. Had the urgency been indeed a real

(1)	(2)	(3)
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one it should not have taken them eight months to publish the final rules after the publication of draft rules.

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| 1 (iii) | 11 | <p>The Committee cannot but reiterate their earlier recommendation made in para 28 of their First Report (Fourth Lok Sabha) that sufficient time should be given to the public to study the draft rules and send their comments thereon before the rules are finalised. To ensure this, the date on which copies of the Gazette containing the draft rules were made available to the public should invariably be mentioned in the preamble to the rules when they are finally notified in the Gazette.</p> |
| 2 (i) | 19 | <p>The Committee find that the recommendation of the Committee made in Para 10 of their Second Report (Fourth Lok Sabha) regarding avoidance of retrospective effect to the rules, regulations, etc. and giving of Explanatory Memorandum in case where such retrospective effect is unavoidable, had been duly noted by the Department of Parliamentary Affairs and circulated to all Ministries/Department <i>vide</i> their O.M. No. F.32(1)/69-R&C dated the 22nd March, 1974 for compliance. The Committee are unhappy to note that the Department of Parliamentary Affairs who circulated the recommendations to all Ministries/Departments for compliance, have themselves failed to pay due attention to it.</p> |
| 2 (ii) | 20 | <p>The Committee are not convinced by the explanation given by the Ministry of Agriculture and Irrigation (Department of Agriculture) for not publishing the Explanatory Memorandum alongwith the rules that it got detached while it was sent for Hindi translation and therefore, it was lost sight of and could not be detected even after the issue of the Central Ground Water Board (Group 'A' and 'B' Services) Recruitment (Second Amendment) Rules, 1976. The Committee have time and again pointed out that the responsibility of the Ministry/Department does not cease with the sending of notification to the Press for</p> |
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(1)	(2)	(3)
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printing. After it is published in the Gazette, it is the duty of the Ministry/Department concerned to verify whether the same has been correctly printed and to issue corrigendum thereto if necessary. The Committee regret that in the present case, the Ministry have published the Explanatory Memorandum only after the Committee had pointed it out to them.

2(iii) 21 The Committee deprecate the carelessness on the part of the Department of Parliamentary Affairs and Ministries of Agriculture and Irrigation (Department of Agriculture) and Defence in the above cases and desire them to be careful in such matters in future. The Committee desire that some procedure should be devised whereby the recommendations of the Committee are carefully noted and complied with and not lost sight of.

3(i) 26 The Committee note with satisfaction that, on being pointed out, the Ministry of Education and Social Welfare (Department of Culture) have agreed to amend the Indian Museum Recruitment Rules, 1977 as desired. The Committee approve the following entry proposed by them in substitution of the existing entry in Column 11 in respect of the posts of (i) Curator (Anthropology), (ii) Photographer; and (iii) Dark Room Assistant in the Schedule appended to the aforesaid Rules and desire the Ministry to issue the proposed amendment at an early date

Existing entry

"50 per cent by promotion and 50 per cent by direct recruitment".

Proposed entry

"50 per cent by promotion, 50 per cent by direct recruitment.

(The first vacancy in the post will be filled up by promotion and the next vacancy will be filled up by direct recruitment and so on)".

3(ii) 27 The Committee further note that in respect of the post of Curator (Art) also, the Ministry have since decided to amend the existing entry in column 11 of the Schedule to the Recruitment Rules in order to read '50 per cent by direct recruitment and 50 per

(1)	(2)	(3)
		cent by promotion'. The Committee desire the Ministry to issue the amendment with the clarificatory note as proposed to be indicated against the posts of (i) Curator (Anthropology), (ii) Photographer, and (iii) Dark Room Assistant, at an early date, if not already done.
4(i)	31	The Committee are unhappy to note that the communications addressed to the Ministry of Petroleum and Chemicals to ascertain whether the amendments to the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974 had been issued or not had not been paid due attention and that their reply in this regard is still pending. The Committee desire that this case of delay and scant regard shown to their communications be brought to the notice of the Minister of Petroleum and Chemicals and his reactions communicated to them for their information.
	32	The Committee, however, desire the Ministry to finalise the proposed amendments to the above Order, if not already done, immediately, on the lines as recommended by the Committee in similar cases on earlier occasions and issue them without any further delay.
4(ii)	35	The Committee note with satisfaction that, on being pointed out, the Ministry of Petroleum and Chemicals have since amended the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974 to the effect that the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure requiring the presence of witness at the time of search and preparation of inventories of seized articles and supplying a copy thereof to the person concerned shall apply to searches and seizures made under the above Order <i>vide</i> their Notificaion No. G.S.R. 2734 published in the Gazette of India dated the 29th November, 1975.
5	39	The Committee note with satisfaction that, on being pointed out, the Ministry of Defence (Department of

(1)	(2)	(3)
		Defence Production) have since issued an amendment to the Heavy Vehicles Factory, Avadi (Group 'A' Posts) Recruitment (Amendment) Rules, 1977, dispensing with the retrospective operation given to these rules.
6(i)	42	The Committee find from the reply of the Ministry of Health and Family Welfare that the plea of urgency in public interest as advanced by them for reducing the period from 30 days to 10 days for inviting suggestions/objections from the affected persons on the draft rules is not borne out by facts. According to the Ministry's own reply the Cabinet had decided to amend Rule 44 of the Prevention of Food Adulteration Rules on the 8th August, 1977 immediately. The Committee observe that the draft rules were published in the Gazette on the 16th November, 1977 <i>i.e.</i> after a period of more than three months of the Cabinet's decision. The Committee feel that had the Ministry been a little more alert and vigilant and had taken immediate steps to implement the Cabinet's decision, the minimum required period of 30 days could have easily been given to the public to submit their suggestions/objections on the draft rules. The Committee exhort the Ministry to be prompt and alert in handling such important matters in future.
6(ii)	45	The Committee note with satisfaction that, on being pointed out, the Ministry of Health and Family Welfare (Department of Health) have agreed to notify the standards of quality of the imported rapeseed oil through an amendment to the Prevention of Food Adulteration Rules, 1955. The Committee desire the Ministry to issue the proposed amendment to the above Rules at an early date if not already done.
7(i)	51	The Committee are not convinced with the reply of the Ministry of Labour in respect of the Coal Mines Labour Welfare Fund (First Amendment) Rules,

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1973. The Committee wish to stress again that mere appending of an Explanatory Memorandum to the rules to justify the retrospective effect, did not do away with the legal necessity of amending the parent Act so as to vest in the Government the powers to frame rules thereunder with retrospective effect.

- 7(ii) 52 With regard to the Apprenticeship Rules, 1971, the Committee note from the reply of the Ministry of Labour that stipend at increased rates has already been paid by the employers to the apprentices with effect from the 1st August, 1971 and even if the retrospective effect given to the rules was removed, it would be impossible for the employers to recover the excess of the stipends paid to the apprentices who had already completed their training and left the institutions. Having regard to the practical difficulties expressed by the Ministry, the Committee do not insist, as an exceptional case, upon issuing amendment to do away with the retrospective effect given to the rules or amending the parent Act so as to vest in Government the power to frame rules with retrospective effect. The Committee once again urge upon the Ministry of Labour to exercise due care in such matters in future and make it doubly sure that no rules|regulations|orders etc. are given retrospective effect without a specific authorisation therefor in the parent Act.

- 8 (i) 59 The Committee note with satisfaction that the Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) have agreed to substitute sub-rule (2) of Rule 24 of the Oil Industry (Development) Rules, so as to eliminate the power of waiving recoveries vested in the Board and to restrict the power of writing off losses to Rs. 20 lakhs in each case, as given below:—

“(2) The Board may write off losses upto Rs. 20 lakhs in each case. Write off of

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losses beyond this amount shall be done with prior approval of the Central Government."

8(ii) 60 The Committee further note that the Ministry have also agreed to lay down and notify guidelines for the Board for writing off losses in the form of a new sub-rule (2A) viz.—

“(2A) While writing off losses under sub-rule (2), the Board shall have regard to the following, namely:—

- (i) the loss does not disclose any defect in the rules;
- (ii) the loss does not disclose any defect in complying with the stipulations specified by the Board;
- (iii) there has not been any serious negligence on the part of an oil industrial concern to which the Board had granted loan and its realisation requires some legal or administrative action;
- (iv) the loss is not attributable to any serious lapse on the part of any employee of the Board and in cases where the loss is attributable to any serious lapse on the part of such employee, it is not realisable from such employee/functionary;
- (v) if the loss of any property acquired by an oil industrial concern with the assistance of the Board is due to fire, flood, earthquake or any other natural cause, it has ensured that the facts were promptly reported, and proved, to the entire satisfaction of the Board that the circumstances aforesaid were beyond the control of the said oil industrial concern;
- (vi) if the loss is due to any expenditure on all or any of the measures specified in

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section 6, a detailed investigation has been carried out by the Board to ascertain the causes thereof and to ensure that the loss is not due to lack of proper technical survey in assessing the technical soundness and viability of the measures or any other lapse on the part of the oil industrial concern executing such measure."

61 The Committee approve the proposed amendment and the guidelines and desire the Ministry to issue them at an early date.

9(i) 70 The Committee are not convinced by the arguments advanced by the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs). The Committee observe that the Ministry of Law have referred to a decision of the Supreme Court in support of the view that the powers conferred on the Director General of Civil Aviation are within the permissible limits of delegated legislation. However, the decision of the Supreme Court refers to the power of delegation with regard to fixation of the rate of excise duty under the Karnataka Excise Act on the ground, *inter alia*, that the Act provides for laying of rules before the legislature which has the power of even repealing the rules. The Committee find that in the present case, the question is not of conferment of power of delegation but it concerns with the power of the Director-General to approve or disapprove or revise the fares of the tariffs. It appears to the Committee that the Ministry have equated the power of approval or disapproval of the Director-General with the power to fix the rates. The Committee, therefore, feel that the decision of the Supreme Court quoted by the Ministry is not wholly appropriate in the present case.

71 The Committee are aware that there are provisions in the Aircraft Act, 1934 for laying of the rules/regulations framed thereunder before Parliament with

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usual provision of modification or amendment or annulment thereof by the Houses of Parliament.

72 Although the Committee on Subordinate Legislation do not exercise powers as contemplated by the Act yet it is a functionary of the House and exercise the right to examine rules/regulations framed under various Acts and recommend changes therein on behalf of the House.

73 The Committee, therefore, reiterate their earlier commendation and desire that the Ministry of Tourism and Civil Aviation should take suitable steps immediately to amend the Aircraft Act, 1934 as suggested by them in para 70 of their Twelfth Report (Sixth Lok Sabha).

APPENDIX II

(Vide para 34 of the Report)

GOVERNMENT OF INDIA

MINISTRY OF PETROLEUM AND CHEMICALS

New Delhi, the 27th October, 1975

ORDER

GSR 2734.—In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955) the Central Government hereby makes the following Order to amend the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974, namely:—

1. (1) This Order may be called the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Amendment Order, 1975.

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

2. In the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974, clause 4 shall be renumbered as sub-clause (1) thereof, and—

(a) in sub-clause (1) as so renumbered, for the words “Head Constable”, the word “Sub-Inspector” shall be substituted;

(b) After sub-clause (1) as so renumbered, the following clause shall be inserted, namely:—

“(2) The provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall, so far as may be, apply to searches and seizures under this Order.”

APPENDIX III

(Vide para 58 of the Report)

GOVERNMENT OF INDIA

MINISTRY OF PETROLEUM, CHEMICALS AND FERTILIZERS

(DEPARTMENT OF PETROLEUM)

(Finance Division)

New Delhi

G.S.R. No. In exercise of the powers conferred by section 31 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby makes the following rules to amend the Oil Industry (Development) Rules, 1975, namely:—

1. These rules may be called the Oil Industry (Development) Amendment Rules, 1978.
2. In the Oil Industry (Development) Rules, 1975, in rule 24, for sub-rule (2), the following sub-rules shall be substituted, namely:—

“(2) The Board may write off losses upto Rs. 20 lakhs in each case. Write off of losses beyond this amount shall be done with the prior approval of the Central Government.

(2A) While writing off losses under sub-rule (2), the Board shall have regard to the following, namely:—

- (i) the loss does not disclose a defect in the rules;
- (ii) the loss does not disclose any defect in complying with the stipulations specified by the Board;
- (iii) There has not been any serious negligence on the part of an oil industrial concern to which the Board had granted loan and its realisation requires some legal or administrative action;
- (iv) the loss is not attributable to any serious lapse on the part of any employee of the Board and in cases where the loss is attributable to any serious lapse on the part of such employee, it is not realisable from such employee functionary's;
- (v) if the loss of any property acquired by an oil industrial concern with the assistance of the Board is due to fire, flood,

earthquake or any other natural cause, it has been ensured that the facts were promptly reported, and proved, to the entire satisfaction of the Board that the circumstances aforesaid were beyond the control of the said oil industrial concern;

- (vi) if the loss is due to any expenditure on all or any of the measures specified in section 6, a detailed investigation has been carried out by the Board to ascertain the causes thereof and to ensure that the loss is not due to lack of proper technical survey in assessing the technical soundness and viability of the measure or any other lapse on the part of the oil industrial concern executing such measure."

(File No. 7(4)/78-PFD)

(S. L. KHOSLA)

*Joint Secretary and Financial Adviser to the
Government of India.*

MINUTES

APPENDIX IV

(Vide para 3 of the Report)

XXXIII

MINUTES OF THE THIRTY-THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79)

The Committee met on Tuesday, the 27th February, 1979 from 15.30 to 16.00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*.

Members

2. Kumari Maniben Vallabh Patel
3. Shri G. S. Reddi
4. Shri P. A. Sangma
5. Shri Sachindralal Singha

SECRETARIAT

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

4. The Committee then Considered Memoranda Nos. 201 to 210 on the following Subjects:—

Sl. No.	Memorandum No.	Subject
(vii)	207	Implementation of recommendations contained in paras 17-20 of the Ninth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Oil Industry (Development) Rules, 1975 (G.S.R. 160-E of 1975).
(ix)	209	The Drugs and Cosmetics (Fifth Amendment) Rules, 1977 (G.S.R. 697-E of 1977).
(x)	210	Implementation of recommendation contained in para 65 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding giving of retrospective effect to the 'orders' framed under various Acts of Parliament [(i) The Apprenticeship Rules, 1971 (G.S.R. 1426 of 1971); and (ii) The Coal Mines Labour Welfare Fund (First Amendment) Rules, 1973 (G.S.R. 504 of 1973)]

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

- * * * *
- (vii) Implementation of recommendations contained in paras 17--20 of the Ninth Report of Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Oil Industry (Development) Rules, 1975 (G.S.R. 1060-E of 1975)—(Memorandum No. 207).

12. The Committee considered the above Memorandum and noted with satisfaction that the Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) had agreed to substitute sub-rule (2) of Rules 24 of the Oil Industry (Development) Rules so as to eliminate the power of waiving recoveries vested in the Board and to reduce the power of writing off losses to Rs. 20 lakhs in each case, as given below:

“(2) The Board may write off losses upto Rs. 20 lakhs in each case. Write off of losses beyond this amount shall be done with prior approval of the Central Government.”

13. The Committee further noted that the Ministry had also agreed to lay down and notify guidelines for the Board in writing off losses in the form of a new sub-rule (2A) viz.

“(2A) While writing off losses under sub-rule (2), the Board shall have regard to the following, namely:-

- (i) the loss does not disclose a defect in the rules;
- (ii) the loss does not disclose any defect in complying with the stipulations specified by the Board;
- (iii) there has not been any serious negligence on the part of an oil industrial concern to which the Board had granted loan and its realisation requires some legal or administrative action;
- (iv) the loss is not attributable to any serious lapse on the part of any employee of the Board and in cases where the loss is attributable to any serious lapse on the part of such employee, it is not realisable from such employee/functionary;
- (v) if the loss of any property acquired by an oil industrial concern with the assistance of the Board is due to fire, flood, earthquake or any other natural cause, it has been ensured that the facts were promptly reported, and proved, to the entire satisfaction of the Board that

the circumstances aforesaid were beyond the control of the said oil industrial concern;

- (vi) If the loss is due to any expenditure on all or any of the measures specified in section 6, a detailed investigation has been carried out by the Board to ascertain the causes thereof and to ensure that the loss is not due to lack of proper technical survey in assessing the technical soundness and viability of the measure or any other lapse on the part of the oil industrial concern executing such measure."

14. The Committee approved the above amendments and desired the Ministry to issue them at an early date.

* * * *

- (ix) The Drugs and Cosmetics (Fifth Amendment) Rules, 1977 (G.S.R. 697-E of 1977)—(Memorandum No. 209).

16. The Committee considered the above Memorandum and observed that the Ministry of Health and Family Welfare (Department of Health) should have been more forthright and specific in replying to the Committee's inquiries. The Committee noted that the Drugs and Cosmetics (Fifth Amendment) Rules, 1977 were published in the Gazette on the 11th November, 1977 and their comments with regard to making available the Gazette copies to the public, were communicated on the 29th July, 1978 i.e. after a lapse of nearly eight months. It was really amazing to find that even after such a lapse of time, the Ministry had not given the exact date as to when the Gazette copies containing draft rules were actually available to the public. The Committee observed that information based on presumptions could not be relied upon by them especially when the exact facts could easily be ascertain. The Committee deprecated the casual approach on the part of the Ministry in replying to Committee's points. The Committee stressed that reply of the Ministry should have been specific and pertinent to the point raised by them.

17. The Committee did not accept the contention of the Ministry that it was in view of the urgent nature of the amendment under reference that a departure was made from the normal practice of giving clear 30 days for inviting objections and suggestions from the public on the draft rules. Had the urgency been indeed a real one, it should not have taken the Ministry to publish the final rules after eight months of the publication of draft rules.

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

18. The Committee decided to reiterate their earlier recommendation made in para 28 of their First Report (Fourth Lok Sabha) that sufficient time should be given to the public to study the draft rules and send their comments thereon before the rules were finalised. To ensure this, the date of the Gazette in which the draft rules were published and the last date fixed for receipt of comments thereon as also the date on which the Gazette copies containing the draft rules were made available to the public should specifically be mentioned in the preamble to the rules when finally notified in the Gazette.

- (x) Implementation of recommendation contained in para 65 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding giving of retrospective effect to the orders framed under various Acts of Parliament [(i) The Apprenticeship Rules, 1971 (G. S. R. 1426 of 1971); and (ii) The Coal Mines Labour Welfare Fund (First Amendment) Rules, 1973 (G.S.R. 504 of 1973)].

19. The Committee considered the above Memorandum and as regards the Coal Mines Labour Welfare Fund (First Amendment) Rules, 1973, they were not convinced with the reply of the Ministry of Labour. The Committee decided to re-stress that mere appending of an Explanatory memorandum to the rules justifying the retrospective effect did not obviate the legal necessity of amending the parent Act to vest in Government the powers to frame rules thereunder with retrospective effect.

20. As regard the Apprenticeship Rules, 1961, the Committee noted from reply of the Ministry that stipend at increased rates had already been paid by the employers to the apprentices with effect from the 1st August, 1971 and even if the retrospective effect given to the rules was removed, it would be impossible for the employers to recover the excess of the stipends to the apprentices who had already completed their training and left the institutions.

21. Keeping in view the practical difficulties pointed out by the Ministry, the Committee decided not to insist, as an exceptional case, upon issuing amendment to do away with the retrospective effect given to the rules or amending the relevant Act vesting in Government the power to frame rules with retrospective effect. The Committee decided to exhort the Ministry of Labour to be careful in such matter in future and make it doubly sure that no rules/regulations/orders etc. were framed with retrospective effect without a specific authorisation therefor by the parent Act.

The Committee then adjourned.

XXXIV

MINUTES OF THE THIRTY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79)

The Committee met on Wednesday, the 21st March, 1979 from 15.30 to 16.30 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*.

MEMBERS

2. Shri Durga Chand
3. Shri Ram Sewak Hazari
4. Shri B. K. Nair
5. Shri T. S. Negi
6. Kumari Maniben Vallabhbai Patel
7. Shri G. S. Reddi
8. Shri Madan Lal Shukla
9. Shri Sachindralal Singha

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SECRETARIAT

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

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The Committee then considered Memoranda No. 211 to 217 on the following subjects:—

Sl, No	Memorandum No.	Subject
1	2	3
(i)	211	(a) The Department of Parliamentary Affairs (Recruitment and Conditions of Service) First Amendment Rules, 1976 (G.S.R. 263 of 1976); (b) The Central Ground Water Board (Group 'A' and 'B' Services) Recruitment (Second Amendment) Rules, 1976 (G.S.R. 1628 of 1976); and (c) The Civilians in Defence Services (Revised 1a) Amendment Rules, 1976 (S.R.O. 19-E of 1976).
(ii)	212	The Indian Museum Recruitment Rules, 1977 (G.S.R. 194 of 1977).

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

1	2	3
(iii)	213	The High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974 (G.S.R. 263-E of 1974).
(iv)	214	The Heavy Vehicles Factory, Avadi (Group 'A' Posts) Recruitment (Amendment) Rules, 1977 (S.R.O. 269 of 1977).
(v)	216	The Prevention of Food Adulteration (Fifth Amendment) Rules, 1977.
(vii)	217	Implementation of recommendations contained in para 70 of the Twelfth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Aircraft (Third Amendment) Rules, 1975 (G.S.R. 2836 of 1975).

- (i) (a) The Department of Parliamentary Affairs (Recruitment and Conditions of Service) First Amendment Rules, 1976 (G.S.R. 263 of 1976;
- (b) The Central Ground Water Board (Group 'A' and 'B' Services) Recruitment (Second Amendment) Rules, 1976 (G.S.R. 1628 of 1976); and
- (c) The Civilians in Defence Services (Revised Pay) Amendment Rules, 1976 (S.R.O. 19-E of 1976)—(Memorandum No. 211).

The Committee considered the above Memorandum and found that the recommendation of the Committee made in para 10 of their Second Report (Fourth Lok Sabha) regarding avoidance of retrospective effect to the rules, regulations, etc. and giving of explanatory memorandum in cases where such retrospective effect was unavoidable, had been duly noted by the Department of Parliamentary Affairs and circulated to all Ministries/Departments *vide* their O.M. No. F. 32(1)/69-R&C dated the 22nd March, 1974 for compliance. The Committee were unhappy to note that the Department of Parliamentary Affairs who had circulated the recommendations to all Ministries/Departments for compliance, had themselves failed to pay due attention to it.

The Committee were not convinced by the explanation given by the Ministry of Agriculture and Irrigation (Department of Agriculture) for not publishing the explanatory memorandum alongwith the rules that the explanatory memorandum had got detached while it was sent for Hindi translation and therefore, it had lost sight of and could not be detected even after the issue of the Central Ground Water Board (Group 'A' and 'B' Services) Recruitment (Second Amendment) Rules, 1976. The Committee had time and again pointed out that the responsibility of the

Ministry/Department did not cease with the sending of notifications to the Press for printing. After it was published in the Gazette, it was the duty of the Ministry/Department concerned to verify whether the same had been correctly printed and to issue corrigendum thereto if necessary. The Committee regretted that in the existing case, the Ministry had published the explanatory memorandum only after the Committee had pointed it out to them.

The Committee deprecated the carelessness on the part of the Ministries/Departments concerned in the above cases and desired them to be careful in such matters in future. The Committee decided to ask the Ministries that some procedure should be devised whereby the recommendations of the Committee were carefully noted and complied with and not lost sight of.

(ii) The Indian Museum Recruitment Rules, 1976 (G.S.R. 194 of 1977)—(Memorandum No. 212).

The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Education and Social Welfare (Department of Culture) had agreed to amend the Indian Museum Recruitment Rules, 1977 to the necessary effect. The Committee approved the following entry proposed by them for substituting the existing entry in column 11 in respect of the posts of Curator (Anthropology) photographer and Dark Room Assistant in the Schedule appended to the Rules and desired them to issue it at an early date:

Existing entry	Proposed entry
"50% by promotion failing which by direct recruitment"	"50% by promotion 50% by direct recruitment (The first vacancy in the post will be filled up by promotion and the next vacancy will be filled up by direct recruitment and so on)"

(iii) The High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974 (G.S.R. 263-E of 1974)—(Memorandum No. 213).

(A)

The Committee considered the above Memorandum and noted that the communications addressed to the Ministry to ascertain whether the amendments to the above Rules proposed by them had been issued or had not been paid due attention and were still pending reply at their end. The Committee directed that this case of delay and scant regard shown to their communications be brought to the notice of Minister of Petroleum and Chemicals and his reactions be communicated to the Committee for their information.

However, the Committee desired the Ministry to finalise the amendments to Order, if not already done immediately on the lines as recommended by the Committee in similar cases on earlier occasions and issue it without any further delay.

(B)

The Committee noted with satisfaction that on being pointed out the Ministry of Petroleum and Chemicals had since amended the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974 to the effect that the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure requiring the presence of witness at the time of search and preparation of inventories of seized articles and supplying a copy thereof to the person concerned shall apply to searches and seizures under the Order *vide* Notification No. G.S.R. 2734 published in the Gazette of India dated the 29th November, 1975.

- (iv) The Heavy vehicles Factory, Avadi (Group 'A' posts) Recruitment (Amendment) Rules, 1977 (S.R.O. 369 of 1977) (Memorandum No. 214).

The Committee considered the above Memorandum and noted with satisfaction that on being pointed out the Ministry of Defence (Department of Defence Production) issued an amendment to the Heavy Vehicles Factory, Avadi (Group 'A' Posts) Recruitment (Amendment) Rules, 1976, dispensing with the retrospective operation of these Rules.

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- (vi) The Prevention of Food Adulteration (Fifth Amendment) Rules, 1977 (G.S.R. 732—E of 1977)—(Memorandum No. 216).

(A)

The Committee considered the above Memorandum and observed that the plea of urgency in public interest in reducing the period for inviting suggestions/objections from the affected persons from 30 to 10 days was not borne out by facts. According to the Ministry's reply, the Cabinet had decided to amend Rule 44 of the Prevention of Food Adulteration Rules on the 8th August, 1977 immediately. However, the draft rules were published in the Gazette on the 16th November, 1977, that is, after more than three months of the Cabinet decision. The Committee felt had the Ministry been a little more alert and vigilant and had taken immediate steps to implement the Cabinet decision, the minimum period of 30 days could have easily been given to the affected persons to submit their suggestions/objections on the draft Rules. The Committee decided to exhort the Ministry for being prompt and alert in handling such important matters.

(B)

The Committee noted with satisfaction that the Ministry of Health and Family Welfare (Department of Health) had agreed to notify the standards of the imported rapeseed oil through an amendment to the Prevention of Food Adulteration Rules. The Committee desired the Ministry to issue the proposed amendment to Rules at an early date if not already done so.

- (vii) Implementation of recommendations contained in para 70 of the Twelfth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Aircraft (Third Amendment) Rules, 1975 (G.S.R. 2386 of 1975)—(Memorandum No. 217).

The Committee considered the above Memorandum and observed that the arguments advanced by the Ministry were not convincing. The Ministry of Law had referred to the decision of the Supreme Court in support of the view that the powers conferred on the Director-General were within the permissible limits of delegated legislation. However, the decision of the Supreme Court referred to the power of delegation with regard to fixation of the rate of excise duty under the Karnataka Excise Act on the ground, *inter-alia*, that the Act provides for laying of rule before the legislature which has the power of even repealing the rules. But in the existing case, the question was not of conferment of power but it concerned with the power of the Director-General to approve or disapprove or revise the fares of the tariffs. It seemed the Ministry had equated the power of approval or disapproval of the Director-General with the power to fix the rates. Therefore, the decision of the Supreme Court mentioned by the Ministry was not wholly appropriate in the existing case.

No doubt there were provisions in the Aircraft Act, 1934 for laying of the rules/regulations framed thereunder before the Parliament with usual provision of modification or amendment or annulment thereof by the Houses of Parliament.

Though the Committee on Subordinate Legislation did not exercise powers as contemplated by the Act yet it was a functionary of the House and exercised the right to examine rules/regulations framed under various Acts and recommend changes therein on behalf of the House.

The Committee reiterated their earlier recommendation and desired the Ministry to take suitable steps immediately to amend the Act as suggested by the Committee in para 70 of their Twelfth Report (Sixth Lok Sabha).

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The Committee then adjourned.

CONFIDENTIAL

MINUTES OF THE THIRTY-FIFTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH
LOK SABHA) (1978-79)

The Committee met on Friday, the 6th April, 1979 from 15.30 to 16.00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman.*

Members

2. Shri Durga Chand
3. Shri B. K. Nair
4. Kumari Maniben Vallabhbai Patel
5. Shri G. S. Reddi
6. Shri Saeed Murtaza

SECRETARIAT

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

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

3. The Committee authorised the Chairman and, in his absence, Shri Durga Chand to present the Eighteenth Report to the House on their behalf on the 9th April, 1979.

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The Committee then adjourned.