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COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

(2008-2009)

TWENTIETH REPORT

(PRESENTED IN LOK SABHA ON)

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LOK SABHA SECRETARIAT

NEW DELHI

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C O N T E N T S

COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2008-2009)

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I N T R O D U C T I O N

I, the Chairman, Committee on Subordinate Legislation having been authorized by the Committee to submit the report on their behalf, present this Twentieth Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sittings held on 4th May, 2005, 18th October, 2006, 9th January, 2008 and 24th January, 2008.

3. The Committee considered and adopted this Report at their sitting held on 14th August, 2008.

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

5. Extracts from minutes of the Ninth sitting of the Committee (2004-05) held on 4th May, 2005, extracts from minutes of the Second sitting of the Committee (2006-07) held on 18th October, 2006, the minutes of Fourth sitting of the Committee (2007-08) held on 9th January, 2008, the Fifth sitting of the Committee (2007-08) held on 24th January, 2008 and extracts from minutes of the First sitting of the Committee (2008-09) held on 14th August, 2008 relevant to this Report are included in Appendices II, III, IV, V and VI respectively.

N.N. KRISHNADAS,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

NEW DELHI;

20 October, 2008,
27 Asvina, 1930 (SAKA)

I

INFIRMITIES IN UNIVERSITY GRANTS COMMISSION (INSPECTION OF UNIVERSITIES) RULES, 2004.

……

Scrutiny of the University Grants Commission (Inspection of Universities) Rules, 2004 (GSR 183-E of 2004) published in the Gazette of India, Part- II, Section 3(i) dated 19th March, 2004 revealed that the rules contained a number of shortcomings. The Ministry of Human Resource Development (Department of Secondary and Higher Education) were requested to furnish their comments in the matter. The issues raised and the comments of the Ministry furnished vide their replies dated 13th December, 2004 and 13th September, 2005 were brought out in Memorandum No. 38 which was considered by the Committee on Subordinate Legislation on 18th October, 2006 wherein the Committee decided to call the representatives of the Ministry of Human Resource Development (Department of Secondary and Higher Education) for oral evidence. Subsequently, the Secretary, Department of Secondary and Higher Education, Vice-Chairman, University Grants Commission and other representatives of the Ministry of Human Resource Development and University Grant Commission appeared before the Committee for evidence on 9th January, 2008. The points raised and the opinion of the Ministry are brought out in the succeeding paragraphs :-

A Ambiguous and vague expressions in Rule 3

1.2 Rule 3 of the University Grants Commission (Inspection of Universities) Rules, 2004 provides as under:-

> "3. The Commission may appoint a Committee, wherever or whenever necessary consisting of such persons as it may decide in each case and subject to the provision of rule 6, to examine and report on the financial needs of a University or its standards of teaching, examination and research or both.
>
> For the purpose of inspection, the universities may be categorized as follows:-

(i) The universities which have been established during last five years and have not got NAAC accreditation may be inspected by the UGC on annual basis.

(ii) The universities which have been accredited by NAAC may not require further inspection by UGC till the date of accreditation is valid.

(iii) The universities which are older than five years and are not accredited by NAAC may be inspected after two or three years."

1.3 The Committee observed from the above rule that it does not specify the general composition of the Inspection Committee and its strength providing for upper and lower limits. When asked to spell out the reasons for not specifying the general composition of the Inspection Committee and its strength providing for upper and lower limits, the Ministry of Human Resource Development (Department of Secondary and Higher Education) in their reply dated 13 December, 2004 stated as under:-

> "The reasons for not specifying the general composition of the Committee, is on account of the fact that for the purpose of inspection, three types of universities have been categorized under sub-clauses (i) to (iii) of clause (3) of the revised Rules for which there may have different set of Committees. The composition of all these Committees may vary from time to time, depending upon their category. However, a part of the composition of the Committee has been specified under clause (6) of the revised Rules which may be common in respect of the Committees for all the three types of Universities."

1.4 The Committee further observed from the Rule 3 of the UGC (Inspection of Universities) Rules that for the purpose of inspection it seeks to categorise Universities on the basis of accreditation. The usage of words 'may be' in sub-rules (i) & (iii) of Rule 3 appears to have diluted the periodicity of inspection specified therein. The Ministry of Human Resource Development (Department of Secondary and Higher Education), when asked to clarify the position in this regard, responded as under:-

> "The National Assessment and Accreditation Council (NAAC) is an Autonomous Institution established under Section 12(ccc) of the UGC Act with the main objective to promote the development of quality higher education infrastructure in the country. All the UGC recognized Universities are required to get themselves accredited by the

NAAC. The intention of sub-clauses (i) and (iii) of clause (3) is to provide for the periodicity in respect of those universities which are yet to be accredited by NAAC."

1.5 Further, in sub-rule (iii) of rule 3, without any objective clause to the words 'after two or three years', it was not clear as to what exactly it seeks to convey, whether 'every two years' or every three years' or anything else. Responding to this point, the Ministry of Human Resource Development (Department of Secondary and Higher Education) stated in their written reply (13 December, 2004) as under:-

"The reason for making the provision of inspection 'every two years' or 'every three years' in respect of the universities which are older than five years and are not accredited by NAAC, depends upon their performance."

1.6 As the replies to above points at paras 1.3, 1.4 and 1.5 were not convincing, it was brought to the notice of the Ministry that the Committee on Subordinate Legislation had time and again emphasized that rules should be self contained and that there appears to be no reason why the rules should not specify the composition of the Committee which could be common for all the three types of Universities and indicate its minimum and maximum strength. It was further pointed out to the Ministry that the rule was ambiguous and it implied that the inspection requirement was not mandatory and the authorities would not be answerable even if the periodicity of inspection specified therein was not adhered to. The sub-rule (iii) was also not specific and open to different interpretations. Keeping the above points in view, when the Ministry were asked whether they have any objection in suitably amending the said rules, the Ministry agreed to the same and vide their reply dated 13 September, 2005 stated as under:-

Clause (3) of the rules is proposed to be revised so as to read as under:

"3. The Commission shall appoint an Inspection Committee to examine and report on the financial needs of a University or its standards of teaching, examination and research or both. The Committee shall consist of not less than five and not more than ten members out of which two must be academicians not associated with the University proposed to be inspected and two representatives of UGC with administrative and/or financial background.

For the purpose of inspection, the universities may be categorized as follows:

(i) The universities which have been accredited by NAAC may not required further inspection by UGC till the date of accreditation is valid.

(ii) The universities which are not accredited by NAAC, shall be inspected every two years.

(iii) Notwithstanding any of the above, any university may be inspected by the Commission on account of an exigency which, in the opinion of the Commission, warrants an inspection before the expiry of the prescribed period in clauses (i) and (ii) above."

1.7 During the course of evidence (9.1.2008), the Committee pointed out that the present rule gives only a vague idea and the same was not sufficient. Asked about the views of the Ministry on the provisions made in Rule 3, the Secretary, Ministry of Human Resource Development stated as under:-

"The composition of Inspection Committee is also proposed to be specified. For this purpose we thought that we will finalise our notification after getting your further guidance in today's meeting. We feel that the composition of the Committee could be somewhere between 3 to 15 members because more than 15 members going and inspecting may be a little difficult. Firstly, getting people from different places will also become costly and also for a university to handle more than 15 people at a time will be little difficult. What we have thought is, there should at least be one Vice Chancellor level person who could either be serving or retired. There would be three or four other experts from the field. We have statutory councils like AICTE, Dental Council or Medical Council and depending on the kind of institution that is being inspected we propose to induct representatives of these important councils in these inspections.

Of course, in the discussions which have taken place with the Department of Legislative Affairs, they have suggested that there should be an officer of the Commission not below the rank of Deputy Secretary to Government of India. We want to take it up again, reason being that if 400 and odd universities plus 20,000 colleges are to be inspected and if a UGC official has to accompany every Committee, it will be very difficult to get these inspections done. We are going to take it up again with them. We can definitely rely on our senior Vice Chancellor in the committee. If we make it mandatory in the rules, it becomes very difficult to get over it. Most of the universities and colleges have girl students or women students. So, we will also try to see that at least one member of the Inspection Committee must be a woman. This is also being proposed. Committees could be the multiple committees. The Legislative Department was earlier feeling as if there would be one Standing Committee and that will last for five years. We have discussed with them and clarified that there will have to be a number of committees. Each of the Committee after finishing its job becomes extinct and newer committees will be appointed. A particular committee can also be given the number of universities for inspection. So, we will not make tenure of any Committee. We want to avoid this here. These are my basic submissions and we will be guided by your further guidance on this. We are

once again grateful to the Hon. Committee for giving a very valuable guidance about these deficiencies and we will certainly rectify all of them".

The witness further added:-

"Sir, as regards Inspection Committee composition, obviously the hon. Committee has very rightly pointed out that there are some deficiencies in 2004 rules. We are in the process of rectifying all this. In fact, as I said, we have received their advice and we will be factoring in all these view points and also the view points of the hon. Committee and what further guidance we would receive from the Committee. Moreover in regard to the composition of the Committee, it should have a woman member also. Regarding the strength of the committee, we are thinking of putting number between 3 to 14 members. Less than three may not be desirable though we require it for same inspections for declaring a university fit enough to receive some special grants etc."

1.8 In reply to a query about seeking the advice of experts while framing the rules, the Secretary, Ministry of Human Resource Development stated as under :-

"All the points which the Hon. Committee has mentioned are very valuable and we are already trying to factor them into the rules to the extent possible."

1.9 The UGC (Inspection of Universities) Rules, 2004 are significant and have a bearing on the quality of education in Universities. There are, however, a number of shortcomings in the rules which make them ambiguous and ineffective. The Committee note that the Rule 3 of the said rules which, *inter-alia*, deals with composition of the Inspection Committee, does not specify its general composition and strength. Besides, sub-rules (i) & (iii) of Rule 3 have been so worded that can dilute the periodicity of inspection specified therein. As a result, the inspection requirement has not been made mandatory and the authorities can not be made accountable even if the periodicity of inspection specified therein is not adhered to. Furthermore, the sub-rule (iii) of Rule 3 is not specific as to whether the inspection is to be conducted every two years or every three years and without any specific clause the sub-rule lacked objectivity. Use of

ambiguous and vague expressions in the inspection rules vitiates the very purpose and objective of the inspection process and makes the rules ineffective and defunct. When the above infirmities in the rules were pointed out to the Ministry of Human Resource Development (Deptt. of Secondary and Higher Education), they stated that they are in the process of rectifying all these deficiencies and the observation of the Committee in this regard would be taken into account while redrafting the rules on these points. The Committee, therefore, desire that the Ministry should do the needful in the matter at the earliest under intimation to the Committee.

(Recommendation Sl. No. 1)

B. <u>Shortcomings in association of University nominees.</u>

1.10 The Rules 6, 7 and 7A of the University Grants Commission (Inspection of Universities) Rules, 2004 read as under:-

> " Rule 6:- The University shall be associated with the inspection in the following manner, namely :-
>
> (a) The University shall nominate not more than three representatives who may include the Vice-Chancellor or the Registrar, the Dean or the Deans of Faculty/Faculties concerned and such other officers/teachers of the department/departments or institutions as may be deputed by the University and their names shall be communicated to the Commission.
> (b) The representatives of the University shall be associated with the inspection for such time and in such manner as may be determined by the Committee after consultation with the University.
> (c) In carrying out the inspection, the Committee may have discussions with such officer/teachers and other members of the department(s) or institution(s) to be inspected as may be considered necessary by the Committee."
>
> Rule 7:- Within the time limit as may be prescribed by the Commission, the Committee shall report its findings to the Commission.
>
> Rule 7A:- Cases of major financial irregularity or violation of standards of teaching, examination and research or both shall be brought to the notice of the university authorities under intimation to the Central Government or the State Government by the Commission."

1.11 Inspection under the above rules is required to bring out cases of financial irregularities and violation of standards of teaching, examination and research. The nominees to be associated with the inspection under Rule 6 (a) in all likelihood will include the Vice-Chancellor or Registrar since the nominees are to be decided by the concerned University. To a query whether it was the view of the Ministry that the association of nominees of the University concerned would really be helpful in unearthing financial irregularities, violation of standards, etc., the Ministry of Human Resource Development (Department of Secondary and Higher Education) stated (vide O.M. dated 13th December, 2004) as under:-

> "Besides University nominees, the Committee shall also consist of other members to be nominated by UGC to examine and report on the matter. Association of University nominees with this Committee will certainly be helpful in unearthing financial irregularities, violation of standards, etc."

1.12 As reply was not found satisfactory, it was pointed out to the Ministry that for the purpose of unearthing irregularities and violation of standards, the Inspection Committee of UGC ought to be independent of the University which was being inspected by it. Association of the nominees of the University concerned in the Inspection Committee would obviously be detrimental to the very objective of unearthing financial irregularities. The Ministry's assertion that association of nominees of the concerned University will certainly be helpful in unearthing financial irregularities, violation of standards, etc. has not been substantiated by any specific instances. In response to these points, the Ministry of Human Resources Development (Department of Secondary and Higher Education) stated (O.M. dated 23rd September, 2005) as under:-

> "Rule 6 of the rules is proposed to be amended to make provision for association of the representatives/nominees of the Universities concerned with the inspection, for clarifications/consultations/discussions only. The proposed amended Rule (6) may read as under:

6. The University concerned shall be associated with the inspection in the following manner, namely: -

(a) The University shall, for discussions/consultations/ clarifications with the Inspection Committee, nominate/ depute not more than three representatives who may include the Vice-Chancellor or the Registrar, the Dean or the Deans of Faculty/Faculties concerned and the officer(s)/ teacher(s) of the Department(s) or institution(s), and their names shall be so communicated to the Commission.

(b) Any other officer(s) or employees(s) or teacher(s) of the university concerned, as may be required by the Inspection Committee to be associated with the inspection for the purpose of discussions/consultations/clarifications, shall also be deputed by the university concerned."

1.13 During the course of oral evidence on 9th January, 2008 when the Committee wanted to know the rationale for associating nominees of the concerned University with the Inspection Committee and whether this provision would not tantamount to influencing the fair assessment by the Inspection Committee, the Secretary, Ministry of Human Resource Development stated as under :-

"The Act as it stands today, sections (1) and (2) read together almost make it obligatory on our part to associate university which is being inspected. In fact, I would read section 13 (1) of the Act. It says that the Commission may, after consultation with the university, go for an inspection of any Department or Departments thereof. So, the consultation process is required before we take up inspection. Section 13(2) makes it further obligatory that the Commission shall communicate to the university the date on which any inspection under sub-section (1) is to be made, and the university shall be entitled to be associated with the inspection in such a manner as may be prescribed".

He further supplemented:-

"On the issue of association of the university to be inspected, we intend to provide in our rules now that they could be associated for the purpose of giving information to the queries which the Committee will have during inspection. They will be present there, to give any information. If the Committee wants to see something, wants to get some more details then the association of the university would be useful for this purpose. And we are going to provide specifically what would be the rule of this association. So, this would be taken care of. We fully assure you that your recommendations are getting the highest consideration. They will only be associated with committee, to give us information.

In this, we are of course going to give a schedule of inspection of universities- which university will be inspected when, by which time, etc.

There should be a provision which unfortunately the Act does not provide, which is, 'surprise inspection of universities'. What is happening today many times is this. Suppose some of the unscrupulous elements come to know that on such and such day and time the inspection committee is coming for inspection, they move the equipments like computers from somewhere else to show that it is theirs. In fact, when we are going into the details, we feel that this UGC Act itself may need some small amendments like this so that surprise inspection should be possible though under the rules; today we may not be able to provide but we aim for it in due course.

The 2004 rules also provide that the Government can give a direction to the UGC to get a particular university or institution inspected, if something comes to the notice of the Government. So, in addition to the schedule, which will be prescribed under the rules, it could also be inspected if there is a directions given".

1.14 With regard to follow up action of inspection reports, the witness stated :-

"The revised rules would be there, but we have to give a time frame for the inspection committee's report to be given to the Commission, how many weeks or months the Commission will take to come to a decision and within what period the Commission would inform the university concerned and then again how many days or weeks the university can take – we are proposing a month for them – to give plan of action and what they would be doing etc. But by and large, we are saying that most of the cases, the defects should be rectified within six months. But if larger time period is to be given, the the UGC will note in its file the reasons why more than six months' period is to be given. But by and large, it should not exceed six months. That is the kind of provision which we want to bring in".

1.15 Rule 7A, of the University Grants Commission (Inspection of Universities) Rules, 2004, mandates that cases of major financial irregularity or violation of standards of teaching, examination and research should be brought to the notice of the University. It may, however, be observed that under rule 6(a), the Inspection Committee will have to associate nominees of the University who may include the Vice-Chancellor or Registrar. The Committee feel that for the purpose of unearthing irregularities and violation of standards, the Inspection Committee ought to be independent of the University which is being inspected. Association of the highest functionaries of the University in the Inspection Committee could obviously be detrimental to the very objective of unearthing financial irregularities. The Ministry have now proposed to

bring further amendments in the rules which will specifically provide in the rules that association of nominees of the University will be restricted only for giving information to the queries raised by the Inspection Committee. The Committee feel that the provision in the existing Act is not sufficient to properly check financial irregularities. The Committee, therefore, desire that the Ministry of Human Resource Development should bring further requisite amendments in the existing provisions in the Act/Rules in consultation with the Ministry of Law and Justice so as to remove the lacunae and make these provisions in the Act/Rules legally sound.

(Recommendation Sl. No. 2)

C. <u>Sub-delegation of rule making power</u>

1.16 Section 13(2) of the University Grants Commission Act, 1956 provides as under:-

> 'The Commission shall communicate to the University the date on which any inspection under sub-section (1) is to be made and the University shall be entitled to be associated with the inspection in such manner as may be prescribed.'

According to the above statutory provision, it is the University Grants Commission which is required to prescribe the manner in which the university will be associated with the inspection. Rule 6(b) of the UGC (Inspection of Universities) Rules 2004 has, however, stipulated that the duration and manner of association of the representatives of the University would be determined by the Committee after consultation with the University. Thus, it appears that the Rules have not fulfilled the statutory requirement. Responding to this issue, the Ministry of Human Resource Development (Department of Secondary and Higher Education) stated (O.M. dated 13th December, 2004) that the above Section of the UGC Act does not statutorily require the manner to be prescribed in the Rules and "whenever the

Committee is constituted, the manner of inspection, the terms of reference, etc., are also prescribed in the order constituting the Committee."

Attention of the Ministry was drawn to Section 25 (g) of the University Grants Commission Act, 1956, in terms of which the Central Government has been delegated power to make rules regarding the inspection of Universities. As the Act has not authorised any sub-delegation of the power, it is the Central Government which has to prescribe the manner in which the University could be associated with the inspection and it can not be left to be decided on case to case basis by the Commission. Responding to these observations, the Ministry of Human Resource Development (Department of Secondary and Higher Education) stated that the proposed amendments in Rule (6) would meet the requirements in this regard.

1.17 The Committee pointed out the provisions of section 13(2) of the University Grants Commission Act, 1956 which provides that 'The Commission shall communicate to the University the date on which any inspection under sub-section (1) to be made and University shall be entitled to be associated with the inspection in such manner as may be prescribed'. As per this statutory provision, it is the University Grants Commission which is required to prescribe the manner in which the University will be associated with the inspection. Rule 6 (b) of the UGC Inspection and Visit Rules, 2004 has, however, stipulated that the duration and the manner of the association of the representative will be determined by the Committee. The Government is entitled to formulate the rules. In this case the Ministry is formulating the rules. The University Grants Commission or any agency is not at all entitled to formulate any rules.

Responding to the Committee's observations, the Secretary, Ministry of Human Resource Development stated as under :-

> "Sir, this point has been taken fully note of. Now, in the latest one, which we will come back to, we are going to prescribe the manner in which the University is to be

associated. We will give, for the purpose of giving clarifications on the spot, that kind of formulation etc. We would like to reiterate that the recommendations of the hon. Committee are receiving the highest consideration and they are very valuable and we will be factoring in all these recommendations in the new rules which we will frame very shortly".

1.18 The Committee note that under Section 13(2) of the University Grants Commission Act, 1956, the University Grants Commission is required to prescribe the manner in which the University will be associated with the inspection. The rules under reference have, however, stipulates that the duration and manner of association of the representatives of the University will be determined by the inspection Committee after consultation with the University. This provision amounts to sub-delegation of power which is not envisaged in the parent Act. The Committee, however, note that on being pointed out, the Ministry of Human Resource Development (Department of Secondary and Higher Education) have now proposed to prescribe the manner in the Act/Rules in which the University is to be associated and also to stipulate in the rules the exact purpose for such association. The Committee desire that the Ministry should hasten the process of finalization of proposed amendments.

(Recommendation Sl. No. 3)

1.19 The Committee urge the Ministry to examine the issues afresh from all angles in consultation with their legal department as well as the Ministry of Law and Justice so that the existing provisions in the Act/Rules are suitably reformulated and amended with a view to remove the shortcomings as pointed out and also to make them legally sound.

The Committee further desire that copies of the amended Act/Rules be furnished to them after their notification for their perusal.

(Recommendation Sl. No. 4)

II

ENFORCEMENT OF THE PRAVASI BHARATIYA BIMA YOJANA, 2003 AND THE PRAVASI BHARATIYA BIMA YOJANA, 2006 WITHOUT STATUTORY AUTHORITY

The Pravasi Bharatiya Bima Yojana, 2003 (Scheme) was notified as GSR 889-E of 2003 by the Ministry of Labour and Employment published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 13 November, 2003 and laid on the Table of the House on 12th December, 2003. The Scheme came into force from 25th December, 2003 and was made applicable to all the citizens of the country who apply for and obtain an emigration clearance as required under the Emigration Act, 1983 (31 of 1983). On perusal of the order, it was found that the statutory authority under which the scheme was introduced had not been cited in the Preamble to the Scheme. The matter was, therefore, referred to the Ministry of Labour and Employment for their comments. In response, the Ministry vide their reply dated 11 November, 2004 stated as under :-

> "This Ministry agrees with the observation that the Preamble does not cite the statutory authority under which the Scheme has been introduced. In fact, the Emigration Act does not contain any enabling provision empowering the Central Government to introduce a scheme of this nature. The Legislative Department, Ministry of Law and Justice had pointed out this weakness and suggested to this Ministry to amend theEmigration Act, 1983 and incorporate appropriate provisions for introducing such welfare schemes. However, in view of the urgency involved, the Law Ministry had advised the scheme be introduced through executive instructions."

2.2 The Committee considered the matter at their sitting held on 4th May, 2005. They observed that since this Scheme was applicable to all the citizens of the country and as such binding in nature for all those who apply for emigration clearance under the Emigration Act, 1983, the scheme should have been introduced only under statutory provisions. In the light of the fact that the Government enforced this Scheme through executive instructions and notified it as General Statutory Rules in the Gazette of India, the Committee felt that such a step was patently irregular and misleading and appeared to be an attempt to portray executive instructions as Statutory rules. It was, accordingly, decided to call the representatives of

Ministry of Labour and Employment for oral evidence. Meanwhile, the subject matter stood transferred to the Ministry of Overseas Indian Affairs from the Ministry of Labour and Employment in the year 2005 and that Ministry notified another Pravasi Bharatiya Bima Yojana, 2006 as GSR 39-E of 2006 and published it in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 25 January, 2006. The scheme of 2006 replaced the earlier Pravasi Bharatiya Bima Yojana, 2003 w.e.f. 1st February, 2006. The Preamble to the new scheme also did not contain any citation of the authority under which the scheme was introduced. The Scheme was not even laid on the Table of the House. The matter was accordingly referred to the Ministry of Overseas Indian Affairs for comments. The points wise comments of the Ministry as furnished vide their communication dated 8 May, 2007 are reproduced below:-

"Point No. (i):- The Preamble to the Scheme does not contain citation of the authority which empowers the Government to make the scheme.

Reply of the Ministry:- The scheme to provide Pravasi Bharatiya Bima Yojana was issued by this Ministry in the form of an executive order and therefore, preamble does not refer to any statutory provision.

Point No. (ii):- The Scheme have not been laid on the Table of the House.

Reply of the Ministry

Since the scheme has not been issued under any statutory provision, the same has not been laid on the table of the House.

Point No. (iii):- The above scheme is superseding in nature; therefore the fact stated in para 5 should have been appropriately brought out in the preamble to the notification.

Reply of the Ministry

Executive orders and instructions are formulated and issued by the Department/Ministries themselves as they do not require vetting by the Legislative Department under the Allocation of Business Rules."

2.3 The Committee thereafter held discussions on these issues with the representatives of the Ministry of Overseas Indian Affairs and the Ministry of Law and Justice on 24 January, 2008.

2.4 During the course of evidence, the Committee desired to know categorically under what legislative capacity the scheme had been formulated. While asking the Ministry of Law and Justice to give their considered opinion on the propriety as well as the legal sanctity of the Central Government's action of notifying the Scheme of 2003 as executive instructions, the Committee also sought to know whether the Ministry have ever issued any instructions or guidelines on the points to be kept in view by the Central Government while framing rules or formulating schemes under the powers delegated to them by an Act of Parliament or provisions of the Constitution.

2.5 In reply, the Secretary of the Ministry of Overseas Indian Affairs apprised the Committee as under:-

> "During 2003, the then Prime Minister had announced that for the benefit of the workers, particularly in the Gulf, there will be a compulsory insurance scheme. That was announced in 2003. At that time it was thought it should be announced immediately because it was a welfare scheme. Accordingly, a scheme was worked out and notified. Necessary Notification was sent to the Ministry of Law for vetting the draft. At that stage the Ministry of Law examined it and they advised that there does not seem to be any supporting section in the Emigration Act which enables the Government to do this. As it was considered urgent and as the steps to amend the Act would take some time, the Ministry of Law was advised to take alternate course, that is executive instructions, which is also available to the Government in such circumstances. Accordingly, this advice was accepted by the Ministry and the scheme was notified in 2003. Since then the scheme has been in force. During the scheme's implementation, it was considered that there is further need to improve the scheme for certain weaknesses were noticed in the scheme. Again in 2006 the scheme was further examined and improved upon for the benefit of the workers. The scheme was again notified in 2006. Now, because it was taken up as an executive scheme as advised by the Ministry of Law, the suggestion that enabling provision should be made in the Act or in the law was not taken up because it was considered that without alternative mode executive instructions are available, they may be needed at that stage".

2.6 Clarifying the position further a representative of the Ministry of Law and Justice during the evidence held on 24th January, 2008 submitted as under:-

> "….the Emigration Act, 1983 was enacted for the protection and for safeguarding the interests of Indian emigrants and so has been the Pravasi Bharatiya Bima Yojana, 2003, replaced by the Pravasi Bharatiya Bima Yojana, 2006. Because there is no express provision in the Act empowering the Central Government to make rules as to or issue such a scheme, there appears to be some confusion on the subject. We have examined the whole issue in detail again. The view is that the scheme called the 'Pravasi Bharatiya Bima Yojana' could form part of the rules made under the Act. After all, the scheme is in the interests of emigrants; it primarily takes care of their medical requirements and security for repatriation in case of need. The Act is replete with such concerns, sub-section (3) of section 11 of the Act envisages, inter-alia, furnishing of security for meeting the expenses of repatrition as a condition for registration of a recruiting agent. Clause (b) of sub-section (3) of section 22 requires an application for emigration clearance to be accompanied by a statement as to the provision by way of security for meeting the expenses of repatriation. Clause (d) of sub-section (5) of section 22 makes emigration clearance subject, generally to 'any other relevant circumstances'; 'interests of the applicant to emigrate' constitute an important consideration; if it would not be in the interest of the applicant to emigrate, he may not be granted emigration clearance. Further clause (e) of sub-section (5) of section 22 provides for a ground to refuse emigration clearance to an applicant, if 'no provision or arrangement has been made for meeting the expenses which may be incurred in case it becomes necessary to arrange for the repatriation to India of the applicant' or 'the provisions or arrangements made in this behalf are not adequate for the purpose. Now, coming to the rule making provisions, sub-section (1) of section 43 generally empowers the Central Government to make rules to carry out the provisions of the Act. Clauses (k) of sub-section (2) of section 43, which enumerates specific matters on which rules may be made, provides, inter-alia, for 'the terms and conditions subject to which an emigration clearance may be issued'. Clause (o) of sub-section (2) of section 43 reads 'any other matter which is required to be, or may be, prescribed'. Sir, the view is that the 'Pravasi Bharatiya Bima Yojana' may be said to be covered under the said provisions. It is to safeguard the interests of emigrants. It cannot be said to be inconsistent with the Act. Rather, it may be said to have been issued to carry out the provisions, and thereby the object, of the Act. Sir, my further submission is that it is well-settled that non-mention or wrong mention of the statutory provision as to the power to make rules does not make the rules ultra vires. Further, though not described as a part of the rules under the Act, but issued as an executive scheme, in my view, the Pravasi Bharatiya Yojana, 2006 is intra vires."

2.7 When asked to tender a categorical explanation as to why the preamble to the new Scheme of 2006 also did not cite the statutory authority under which the scheme was

introduced, the Secretary, Ministry of Overseas Indian Affairs submitted that the same procedure was followed in 2006 as in the Scheme of 2003 because the Scheme was only modified to give more benefits to the workers. He further stated that since the Law Ministry have mentioned that it can be brought under Section 43 of the Act, the Scheme can be re-notified accordingly if the Committee recommends. He further clarified that if the scheme be treated as rules although mis-described as executive scheme, it could very well be published in Section (3) sub-section(i) of Part II of the Gazette which is meant for general statutory rules including orders, bye-laws, etc. of general character and for executive instructions or non-statutory rules and regulations, the relevant Part is Part I , Section(1) of the Gazette. He emphasized that at this stage, these schemes could be transformed into the rules issued or made under Section 43A of the Act without any amendment in the provisions of the Act.

2.8 Responding to the query whether the Ministry of Law and Justice have issued any instructions or guidelines to other Ministries/Departments of the Central Government, a representative of the Ministry stated that they have issued an O.M. regarding the scope of examination of Subordinate Legislation. A copy of O.M. No.13(25)/04-L.I dated 25 November, 2005 pertaining to 'Vetting of rules/regulations/orders/notifications was subsequently furnished by the Ministry. The aforesaid O.M. seeks to bring to the notice of the administrative Ministries/Departments, the scope of vetting of draft rules/regulations by the Legislative Department of Ministry of Law and Justice. The OM also includes as under:-

> "Under the Government of India (Allocation of Business) Rules, 1961, 'Scrutiny of statutory Rules and Orders' has been assigned to the Legislative Department. This Department scrutinizes draft rules/regulations/orders/notifications mainly from the following angles:-
>
> (i) whether the draft is intra vires;
>
> (ii) whether various directions of the Committee on Subordinate Legislation have been observed; and
>
> (iii) whether the draft is in proper legal format"

It further states that Administrative Ministries/Departments should ensure before forwarding draft rules/regulations/ order/notifications for vetting that they are properly prepared from administrative angle. The O.M. however does not contain comprehensive guidelines/instructions on the points to be kept in view by the Administrative Ministries/Departments while formulating Rules/Regulations/ Orders/Notification etc.

2.9 When asked as to what is the difficulty in amending the Emigration Act, 1983 to incorporate enabling provisions so as to make the Schemes legally tenable, the Secretary of Ministry of Overseas Indian Affairs stated during the evidence as under:-

> "The Emigration Act, 1983 is under the process of amendment since November, 2002. In fact, it was brought before the Thirteenth Lok Sabha in 2004. Then, the Lok Sabha was dissolved and it automatically lapsed. We are again in the process of doing the amendment to the 1983 Act. It is at a very advanced stage. If the Ministry of Law is feeling that an enabling provision is required, the Ministry of Overseas Indian Affairs have no reservations on that. We are willing to do that."

He further added:-

> "Sir, I would like to submit that we are doing major changes in the Emigration Act of 1983. The earlier Act of 1922 was replaced in 1983 after the intervention of the Supreme Court. The labour market has changed. We are doing major changes in the Act itself, particularly, for the welfare of the workers. We are inserting a number of clauses in the Act to enable the Central Government to issue, from time to time, instructions and formulate various schemes. We will examine whether this scheme is coming within the purview of those enabling provisions. If it is coming, it will take care of it."

2.10 When asked to explain as to why the Ministry of Law and Justice had tendered the advice to notify the scheme by way of an executive order when the enabling provisions were stated to be there in the Act, the representative of the Ministry submitted that the confusion arose because there was no express provision for issuing the scheme of this nature and no deeper thought was given at that stage. He further reiterated that the scheme can be transformed into rules and published afresh even without amending the Act or otherwise specific provision can be made in the Act to make the provisions very clear.

2.11 Not convinced with the explanation tendered by both the Ministries on this point, the Committee desired that the matter should be examined in detail from a legal angle and factual position in this regard be submitted to the Committee within one month.

2.12 Subsequently, the Ministry of Law and Justice, Legislative Department furnished their reply dated 2 April, 2008 wherein it has been stated that :-

> "Ministry of Labour (who was then administratively concerned with the subject) had forwarded a draft of the Pravasi Bharatiya Bima Yojana, 2003 for vetting in this Department. In brief, the proposal was a scheme for providing Insurance to Indian Emigrants going abroad for employment. The matter was examined in this Department and the following observations were made:-
>
> > 'With a view to giving effect to the announcement made by the Hon'ble Prime Minister on 9th January, 2003 to unveil a Paravasi Bhartiya Bima Yojna, Ministry of Labour has prepared a draft notification and referred the same to this Department for vetting. The administrative Ministry has indicated that this notification would be made in exercise of the powers conferred by clause (o) of sub-section (2) of section 43 of the Emigration Act, 1983 (31 of 1983).'
>
> On a perusal of the various provisions of the Emigration Act, 1983 it is noted that the aforesaid section deals with the rule making power of the Central Government and the residual clause (o) is to be invoked for carrying out the provisions of the Act where no express rule making aspect has been specifically mentioned. The Act does not contain any specific enabling provision empowering the Central Government to issue a scheme of the nature. Further, the Act does not empower the Protector of Emigrants to deny an emigration clearance on the ground of non-obtaining of the insurance cover and this will dilute the compulsory nature of the insurance scheme proposed. The administrative Ministry may either amend the Act by incorporating therein suitable enabling provisions for issuance of the proposed scheme. However, as this would be time consuming and in view of the urgency involved in the matter, the administrative Ministry may like to issue an executive scheme to carry out the announcement made by the Hon'ble Prime Minister.
>
> The draft notification placed on the file may, accordingly, be suitably modified and issued by the administrative Ministry as a non-statutory scheme.
>
> It may be seen that a view was taken in the matter that the Act had no express provisions for the enactment of such a scheme. Accordingly, the administrative Ministry was apprised that the said scheme can be framed under the Act, only if there is a specific provisions for the framing of such a scheme under the said Act. Thus, it may require an amendment of the Act to give a statutory status to such a scheme. However, as the Ministry of Labour was keen on introducing the scheme for the welfare of the immigrants and the amendment of the Emigration Act would have taken much time thereby defeating the very purpose of the scheme. Hence the alternative available was to introduce the scheme through executive order as a non-

statutory scheme in exercise of executive powers. Under article 73 of the Constitution of India, the executive powers of the Union are co-extensive with legislative powers Article 73 reads as under:-

> Extent of executive power of the union:- (1) Subject to the provisions of this Constitute the executive power of the union shall extend-
>
> a) to the matters in respect of which Parliament has the power to make laws; and
>
> b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:
>
> Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State 1*** to matters with respect to which the Legislature of the State has also power to make laws.

While the executive cannot act against the provisions of a law it does not follow that in order to enable the executive to function relating to a particular subject there must be a law already in existence authorizing such an action (1955) 2SCR225, AIR 1974 SC 12). Accordingly, the scheme was framed under the executive order and published in the Official Gazette vide GSR No. 889-E dated 13th November, 2003"

2.13 It has further been stated that the matter has been re-examined in the Department and they are of the view that:-

> "the scheme framed as the executive order do not specifically fall within the rule making provisions of the Act. Though a view was taken by the representative of this Department that the 'Pravasi Bharatiya Bima Yojana' could have been framed under section 43(2)(o) of the Emigration Act, 1983. In fact since the aforesaid subject was not specifically enumerated under the rule making powers of the Central Government under section 43 of the aforesaid Act, it was opined by this Department that the administrative Ministry may like to frame a scheme in exercise of the executive of the executive functions available to it under article 73 of the Constitution.
>
> In view of the above, the action of the Union Government was taken under the executive powers. However, if the Hon'ble Committee on Subordinate Legislation is of the view that it should be part of the Act, then this Department does not have any legal or constitutional objection to carrying out amendment in the relevant provisions of the Act with retrospective effect."

2.14 The Ministry of Overseas Indian Affairs vide their reply dated 09.04.08 stated that in the absence of any enabling provision under the Emigration Act, 1983 it is proposed to amend the Act to insert a new Section 29A providing that:

> "The Central Government may:-
> (a) for the purposes of implementation of any treaty, agreement or convention between India and a foreign country; or
> (b) for the promotion of emigration, protection and welfare of the emigrants,
> take such measures, as may be considered necessary, including framing of schemes and establishment of welfare fund for emigrants and administration of the fund in such manner as may be prescribed."

2.15 The Committee are constrained to note that Ministries of Labour and Employment and Overseas Indian Affairs notified the Pravasi Bharatiya Bima Yojana, 2003 and the Pravasi Bharatiya Bima Yojana, 2006 respectively through executive instructions under the garb of General Statutory Rules in Part –II, Section 3(i), of Gazette of India which is patently irregular, was an attempt to portray executive instructions as statutory rules. What is more disturbing is that the administrative Ministry went a step further and laid the scheme on the Table of the House.

2.16 The absence of citation of statutory authority in the Preamble to the scheme, however, gave a clue and it came out that the scheme of 2003 was a non-statutory executive scheme. It was neither required to be laid in the House nor published in that particular part of the Gazette. Since the scheme was applicable to all citizens of the country who apply for and obtain an emigration clearance as required under the Emigration Act, 1983, it was felt that it should have been introduced only under statutory provisions. The plea of the Secretary, Ministry of Overseas Indian Affairs during oral evidence that the scheme of 2003 was introduced as an executive scheme on the advice of the Ministry of Law and Justice and the same route was used to introduce the scheme of 2006 in replacement of the earlier scheme, was found to be unsatisfactory.

2.17 The contention of the Ministry of Law and Justice (Legislative Department) that the administrative Ministry's initial proposal to notify the scheme under Section 43(2)(o) of the Act was not found acceptable as they felt that the aforesaid section deals with rule making power of the Central Government and the residual Clause (o) is to be invoked only for carrying out the provision of the Act where no express rule making aspect has been specifically mentioned. It was further clarified that the Act neither contained any specific enabling provision empowering the Central Government to issue a scheme of this nature nor did it empower the Protector of Emigrants to deny clearance to an emigrant on the ground of non-obtaining of the insurance cover. This would have resulted in dilution of the compulsory nature of the insurance scheme proposed. The Legislative Department, therefore, opined that the administrative Ministry may either amend the Act by incorporating therein suitable enabling provisions for insurance of the proposed scheme or issue a non-statutory scheme in exercise of the executive powers conferred by Article 73 of the Constitution in view of the urgency involved. Though a different view was taken by the representative of the Legislative Department during oral evidence that the scheme could have been framed under section 43(2)(o) of the Emigration Act, the Department's subsequent post-evidence reply reiterated their earlier stand that the scheme do not specifically fall within the rule-making provision of the Act. The Ministry also further submitted that they do not have any legal or constitutional objection to carry out amendment in the relevant provisions of the Act with retrospective effect to insert express provisions for framing such schemes. Similarly, the Ministry of Overseas Indian Affairs in their subsequent post-evidence reply stated that in the absence of any enabling provision under the Emigration Act, the Ministry proposes to insert a new section 29A while amending the Act which would among other provide for specific enabling provision for

framing of schemes for emigrants. While the powers of the Central Government to issue an executive scheme in exercise of their executive powers in an emergent situation is absolutely not in contention, the Committee feels that these should have been given proper statutory backing thereafter. The Committee strongly deprecate the failure of the administrative Ministries to take any appropriate initiative in this direction even after a lapse of five years and also find their action of notifying the scheme of 2006 yet again as an executive scheme even in the absence of any emergent situation with the same mistake of publishing it as a GSR is highly unjustifiable. It was only after the taking up the matter by the Committee repeatedly that both the Ministries examine the matter in the right perspective and agreed to incorporate necessary statutory backing to the scheme. The Committee, therefore, recommend that the amendments to the Act as proposed by the Ministry may be carried out expeditiously.

(Recommendation Sl. No. 5)

2.18 The Committee are also surprised to note the wavering opinion of the Legislative Department of the Ministry of Law and Justice on such a basic question as ascertaining whether enabling provisions for promulgation of the Scheme exists in the Act or not. The Committee observe that being the nodal agency entrusted with the statutory duty of vetting of Subordinate Legislation, the Legislative Department have an important role in offering right guidance to the administrative Ministries and as such should have been in a position to give the final word in such matters. The error of publishing the executive scheme as GSR in the wrong Part of the Gazette leading to avoidable confusion in the instant case could have been easily detected and pointed out by the Legislative Department at the vetting stage, had the Department been a little more vigilant. While observing that there appeared to be loopholes in the vetting process,

the Committee recommend that the present process should be evaluated afresh so that such discrepancies are eliminated at the draft stage.

(Recommendation Sl. No. 6)

2.19 The Committee also regret to note that the Legislative Department have not so far issued any comprehensive guidelines or instructions on the lines of the 'DOPT guidelines on framing Recruitment Rules', which the administrative Ministries/Departments should keep in view while framing subordinate legislation. On a pointed query during the evidence, the representative of Legislative Department referred to an O.M. dated 24th January, 2008 which only describe in brief the scope of vetting of draft rules/regulations by the Ministry of Law and Justice. The Committee, therefore, strongly recommend that the Ministry of Law and Justice should draw up such detailed instructions at the earliest which would go a long way in not only rendering right guidance to the Government Departments/Ministries while formulating subordinate legislations but also remove scope for omissions and errors in the vetting process of the Department itself, which have been found by the Committee time and again. The Committee would await action taken in the matter within a period of three months from the date of presentation of the Report.

(Recommendation Sl. No.7)

N.N. KRISHNADAS,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

NEW DELHI;

20 October, 2008
27 Asvina, 1930 (SAKA)

APPENDIX –I

(Vide Para 4 of the Introduction to the Report)

STATEMENT OF RECOMMENDATIONS MADE IN THE TWENTIESH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	Recommendations/observations
1	2	3
1.	1.9	**Infirmities in University Grants Commission (Inspection of Universities) Rules, 2004.** **The UGC (Inspection of Universities) Rules, 2004 are significant and have a bearing on the quality of education in Universities. There are, however, a number of shortcomings in the rules which make them ambiguous and ineffective. The Committee note that the Rule 3 of the said rules which, *inter-alia*, deals with composition of the Inspection Committee, does not specify its general composition and strength. Besides, sub-rules (i) & (iii) of Rule 3 have been so worded that can dilute the periodicity of inspection specified therein. As a result, the inspection requirement has not been made mandatory and the authorities can not be made accountable even if the periodicity of inspection specified therein is not adhered to. Furthermore, the sub-rule (iii) of Rule 3 is not specific as to whether the inspection is to be conducted every two years or every three years and without any specific clause the sub-rule lacked objectivity. Use of ambiguous and vague expressions in the inspection rules vitiates the very purpose and objective of the inspection process and makes the rules ineffective and defunct. When the above infirmities in the rules were pointed out to the Ministry of Human Resource Development (Deptt. of Secondary and Higher Education), they stated that they are in the process of rectifying all these deficiencies and the observation of the Committee in this regard would be taken into account while redrafting the rules on these points. The Committee, therefore, desire that the Ministry should do the needful in the matter at the earliest under intimation to the Committee.**
	1.15	**Rule 7A, of the University Grants Commission (Inspection of Universities) Rules, 2004, mandates that cases of major financial irregularity or violation of standards of teaching, examination and research should be brought to the notice of the University. It may, however, be observed that under rule 6(a), the Inspection**

		Committee will have to associate nominees of the University who may include the Vice-Chancellor or Registrar. The Committee feel that for the purpose of unearthing irregularities and violation of standards, the Inspection Committee ought to be independent of the University which is being inspected. Association of the highest functionaries of the University in the Inspection Committee could obviously be detrimental to the very objective of unearthing financial irregularities. The Ministry have now proposed to bring further amendments in the rules which will specifically provide in the rules that association of nominees of the University will be restricted only for giving information to the queries raised by the Inspection Committee. The Committee feel that the provision in the existing Act is not sufficient to properly check financial irregularities. The Committee, therefore, desire that the Ministry of Human Resource Development should bring further requisite amendments in the existing provisions in the Act/Rules in consultation with the Ministry of Law and Justice so as to remove the lacunae and make these provisions in the Act/Rules legally sound.
	1.18	**The Committee note that under Section 13(2) of the University Grants Commission Act, 1956, the University Grants Commission is required to prescribe the manner in which the University will be associated with the inspection. The rules under reference have, however, stipulates that the duration and manner of association of the representatives of the University will be determined by the inspection Committee after consultation with the University. This provision amounts to sub-delegation of power which is not envisaged in the parent Act. The Committee, however, note that on being pointed out, the Ministry of Human Resource Development (Department of Secondary and Higher Education) have now proposed to prescribe the manner in the Act/Rules in which the University is to be associated and also to stipulate in the rules the exact purpose for such association. The Committee desire that the Ministry should hasten the process of finalization of proposed amendments.**
	1.19	**The Committee urge the Ministry to examine the issues afresh from all angles in consultation with their legal department as well as the Ministry of Law and Justice so that the existing provisions in the Act/Rules are suitably reformulated and amended with a view to remove the shortcomings as pointed out and also to make them legally sound.** **The Committee further desire that copies of the amended Act/Rules be furnished to them after their notification for their perusal.**

2.		**<u>Enforcement of the Pravasi Bharatiya Bima Yojana, 2003 and the Pravasi Bharatiya Bima Yojana, 2006 without statutory authority</u>**
	2.17	**The contention of the Ministry of Law and Justice (Legislative Department) that the administrative Ministry's initial proposal to notify the scheme under Section 43(2)(o) of the Act was not found acceptable as they felt that the aforesaid section deals with rule making power of the Central Government and the residual Clause (o) is to be invoked only for carrying out the provision of the Act where no express rule making aspect has been specifically mentioned. It was further clarified that the Act neither contained any specific enabling provision empowering the Central Government to issue a scheme of this nature nor did it empower the Protector of Emigrants to deny clearance to an emigrant on the ground of non-obtaining of the insurance cover. This would have resulted in dilution of the compulsory nature of the insurance scheme proposed. The Legislative Department, therefore, opined that the administrative Ministry may either amend the Act by incorporating therein suitable enabling provisions for insurance of the proposed scheme or issue a non-statutory scheme in exercise of the executive powers conferred by Article 73 of the Constitution in view of the urgency involved. Though a different view was taken by the representative of the Legislative Department during oral evidence that the scheme could have been framed under section 43(2)(o) of the Emigration Act, the Department's subsequent post-evidence reply reiterated their earlier stand that the scheme do not specifically fall within the rule-making provision of the Act. The Ministry also further submitted that they do not have any legal or constitutional objection to carry out amendment in the relevant provisions of the Act with retrospective effect to insert express provisions for framing such schemes. Similarly, the Ministry of Overseas Indian Affairs in their subsequent post-evidence reply stated that in the absence of any enabling provision under the Emigration Act, the Ministry proposes to insert a new section 29A while amending the Act which would among other provide for specific enabling provision for framing of schemes for emigrants. While the powers of the Central Government to issue an executive scheme in exercise of their executive powers in an emergent situation is absolutely not in contention, the Committee feels that these should have been given proper statutory backing thereafter. The Committee strongly deprecate the failure of the administrative Ministries to take any appropriate initiative in this direction even after a lapse of five years and also find their action of notifying the scheme of 2006 yet again as an executive scheme even in the absence of any emergent situation with the same mistake of publishing it as a GSR is highly unjustifiable. It was only after the taking up the matter by the Committee repeatedly that both the Ministries examine the matter in the right perspective and agreed to incorporate necessary statutory backing**

		to the scheme. The Committee, therefore, recommend that the amendments to the Act as proposed by the Ministry may be carried out expeditiously.
	2.18	**The Committee are also surprised to note the wavering opinion of the Legislative Department of the Ministry of Law and Justice on such a basic question as ascertaining whether enabling provisions for promulgation of the Scheme exists in the Act or not. The Committee observe that being the nodal agency entrusted with the statutory duty of vetting of Subordinate Legislation, the Legislative Department have an important role in offering right guidance to the administrative Ministries and as such should have been in a position to give the final word in such matters. The error of publishing the executive scheme as GSR in the wrong Part of the Gazette leading to avoidable confusion in the instant case could have been easily detected and pointed out by the Legislative Department at the vetting stage, had the Department been a little more vigilant. While observing that there appeared to be loopholes in the vetting process, the Committee recommend that the present process should be evaluated afresh so that such discrepancies are eliminated at the draft stage.**
	2.19	**The Committee also regret to note that the Legislative Department have not so far issued any comprehensive guidelines or instructions on the lines of the 'DOPT guidelines on framing Recruitment Rules', which the administrative Ministries/Departments should keep in view while framing subordinate legislation. On a pointed query during the evidence, the representative of Legislative Department referred to an O.M. dated 24th January, 2008 which only describe in brief the scope of vetting of draft rules/regulations by the Ministry of Law and Justice. The Committee, therefore, strongly recommend that the Ministry of Law and Justice should draw up such detailed instructions at the earliest which would go a long way in not only rendering right guidance to the Government Departments/Ministries while formulating subordinate legislations but also remove scope for omissions and errors in the vetting process of the Department itself, which have been found by the Committee time and again. The Committee would await action taken in the matter within a period of three months from the date of presentation of the Report.**

APPENDIX II
(Vide Para 5 of the Introduction to the Report)

EXTRACTS FROM MINUTES OF THE NINTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA)(2004-2005)

The Committee met on Wednesday, 4 May, 2005 from 1500 to 1545 hours in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

2. Shri Omar Abdullah
3. Shri N.Y. Hanumanthappa
4. Shri A. Venkatarami Reddy
5. Shri Chandra Shekhar Sahu
6. Shri Sitaram Singh
7. Shri Ramji Lal Suman
8. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri John Joseph - Additional Secretary
2. Shri A. Louis Martin - Director
3. Shri J.V.G. Reddy - Under Secretary

2. X X X X

3. Thereafter, the Committee took up the following memoranda for consideration.

(1) Memorandum No. 10 regarding enforcement of Pravasi Bharatiya Bima Yojana 2003 without statutory authority.

(2) X X X X.

(3) X X X X

(4) X X X X

4. X X X X

5. As regards the memorandum at Sl.No. (1), the Committee were not satisfied with the reply of the Ministry of Labour that due to urgency the Pravasi Bharatiya Bima Yojana 2003 was introduced by executive instructions and rules relating to the scheme were notified as GSR Extraordinary without any legislative sanction. Since notification of executive instructions as statutory rules without legislative backing is not proper, the Committee decided to call the representatives of the Ministry of Labour for oral evidence.

The Committee then adjourned.

XX Omitted portion of the Minutes are not relevant to this Report.

APPENDIX III
(Vide Para 5 of the Introduction to the Report)

EXTRACTS FROM MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA)(2006-2007)

The Committee met on Wednesday, 18 October, 2006 from 15.00 to 15.45 hours in Committee Room No. 62, First Floor, Parliament House, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

2 Shri Anandrao Vithoba Adsul

3 Shri Ram Singh Kaswan

4. Shri Jaisingrao Gaikwad Patil

5. Shri Bhupendrasinh Solanki

6. Shri Ramji Lal Suman

7. Shri Madhu Goud Yaskhi

SECRETARIAT

1.	Shri J. P. Sharma	-	Joint Secretary
2.	Shri A. Louis Martin	-	Director
3.	Shri R. K. Bajaj	-	Deputy Secretary
4.	Shri K. Jena	-	Under Secretary

2. At the outset, the Chairman, Committee on Subordinate Legislation welcomed the members to the sitting of the Committee.

3. X X X X

4. Then, the Committee took up for consideration Memorandum No. 38 regarding the University Grants Commission (Inspection of Universities) Rules, 2004. After considering the matter in detail, the Committee felt that for the purpose of unearthing irregularities and violation of standards etc. in a University, the inspection Committee ought to be totally independent of the University. Though the Ministry had proposed to amend the rules to restrict the role of nominees of the University to discussions/consultations/clarifications with the Inspection Committee, the Committee felt that association of the functionaries of the University will leave room for influence which could defeat the very purpose of inspection. The Committee, therefore, decided to call the representatives of the Ministry of Human Resource Development for discussion on the matter.

The Committee then adjourned.

XX Omitted portion of the Minutes are not relevant to this Report.

APPENDIX IV
(Vide Para 5 of the Introduction to the Report)

MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA)(2007-2008)

The Committee met on Wednesday, 9 January, 2008 from 1500 to 1600 hours in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Anandrao Vithoba Adsul,
3. Shri Giridhar Gamang
4. Shri Ram Singh Kaswan
5. Shri Jaisingrao Gaikwad Patil
6. Shri Bhupendrasinh Solanki
7. Shri Ramji Lal Suman

SECRETARIAT

1.	Shri J. P. Sharma	-	Joint Secretary
2.	Shri Rajeev Sharma	-	Director
3.	Shri R. D. Silawat	-	Deputy Secretary-II

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF SECONDARY AND HIGHER EDUCATION) AND THE UNIVERSITY GRANTS COMMISSION

1.	Shri R.P. Agrawal	-	Secretary, Higher Education
2.	Shri Ravi Mathur	-	Joint Secretary, Higher Education
3.	Prof. Mool Chand Sharma	-	Vice Chairman, UGC
4.	Dr. R.K. Chauhan	-	Officiating Secretary, UGC
5.	Dr. (Mrs.) Pankaj Mittal	-	Joint Secretary, UGC

2. At the outset, the Chairman welcomed the representatives of the Ministry of Human Resource Development and University Grants Commission and drew their attention to Direction 55 of Directions by Speaker, Lok Sabha regarding confidentiality of the proceedings of the sitting of the Committee.

3. Thereafter, the Committee held discussion regarding shortcomings noticed in several provisions of the University Grants Commission (Inspection of Universities) Rules, 2004.

4. The following important points emerged out of the discussion at the sitting of the Committee:-

(i) Dealing with financial irregularities in Universities.

(ii) Associating nominees of the concerned University with the Inspection Committee and apprehension of influencing the fair assessment by the Inspection Committee.

(iii) Use of ambiguous and vague expressions in Rule 3 of the University Grants Commission (Inspection of Universities) Rules, 2004 which did not specify the general composition of the Inspection Committee and its strength.

(iv) Amendments be done in consultation with legal department of the Ministry of Law and Justice to ensure that the rules are legally sound and tenable.

The verbatim record of the proceedings was kept.

The Committee then adjourned.

APPENDIX V
(Vide Para 5 of the Introduction to the Report)

MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA)(2007-2008)

The Committee met on Thursday, 24 January, 2008 from 11.30 to 12.35 hours in Committee Room '62', Parliament House, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

2. Shri Ram Singh Kaswan
3. Shri Jaisingrao Gaikwad Patil
4. Shri Bhupendrasinh Solanki
5. Shri Ramji Lal Suman
6. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri J. P. Sharma - Joint Secretary
2. Shri Rajeev Sharma - Director
3. Shri R. D. Silawat - Deputy Secretary-II

REPRESENTATIVES OF THE MINISTRY OF OVERSEAS INDIAN AFFAIRS

1.	Shri Nirmal Singh	-	Secretary
2.	Shri J. Panda	-	Protector General of Emigrants
3.	Dr. Ranbir Singh	-	Director(EP)
4.	Mrs. Shailja Sharma	-	Director (ES)

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)

1.	Dr. B.A. Agrawal	-	Additional Secretary
2.	Ms. Reeta Vasishta	-	Deputy Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Committee and the representatives of the Ministries of Overseas Indian Affairs and Law & Justice (Legislative Department) and drew their attention to Direction 55 of Directions by the Speaker, Lok Sabha regarding confidentiality of the proceedings of the sitting of the Committee.

3. Thereafter, the Committee held discussion on the shortcomings noticed in the Pravasi Bharatiya Bima Yojana, 2003 (GSR 889-E of 2003) and Pravasi Bharatiya Bima Yojana, 2006 (GSR 39-E of 2006).

4. The following points were discussed at the sitting of the Committee:-

(i) The notification of the Schemes of 2003 and 2006 through executive instructions under the garb of General Statutory Rules ;

(ii) Absence of citation of the Statutory Authority in the Preamble under which the Schemes of 2003 and 2006 were introduced;

(iii) Whether the Ministry of Law & Justice had issued any instructions or guidelines to be kept in view by the Central Government while framing rules or formulating schemes;

(iv) Need for enabling provision in the Emigration Act, 1983 to be examined from legal angle.

The verbatim record of the proceedings was kept.

The Committee then adjourned.

APPENDIX VI
(Vide Para 5 of the Introduction to the Report)

EXTRACTS FROM MINUTES OF THE FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2008-2009)

The Committee met on Thursday, 14th August, 2008 from 1500 to 1545 hours in Committee Room No. 139, Parliament House Annexe, New Delhi.

PRESENT

Shri Giridhar Gamang - In the Chair

MEMBERS

2. Shri Anandrao Vithoba Adsul
3. Shri Ram Singh Kaswan
4. Shri Jaysingrao Gaikwad Patil
5. Shri Lalmani Prasad
6. Shri Bhupendrasinh Solanki
7. Shri Ramji Lal Suman
8. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri R.K. Bajaj - Director
2. Shri R. D. Silawat - Deputy Secretary-II

2. In the absence of Chairman, members of the Committee who were present chose amongst themselves Shri Giridhar Gamang to act as Chairman for the sitting in terms of Rule 258(3) of Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, the Chairman welcomed the members to the first sitting of the re-constituted Committee (2008-09).

4. The Committee then took up for consideration the draft 20th Report and adopted the same without any modifications/corrections. The Committee also decided that the Report may be presented to the House.

5. XX XX XX

6. XX XX XX

7. XX XX XX

The Committee then adjourned.

XX Omitted portion of the Minutes are not relevant to this Report.