

Confidential

COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTEENTH LOK SABHA)
(2010-2011)

SIXTEENTH REPORT

(PRESENTED ON 1.3.2011)

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LOK SABHA SECRETARIAT

NEW DELHI

March, 2011/Phalguna, 1932

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2010-2011)

1. **Shri P. Karunakaran** **Chairman**
2. Shri Paban Singh Ghatowar
3. Shri Rajen Gohain
4. Shri D.B. Chandre Gowda
5. Shrimati Paramjit Kaur Gulshan
6. Shri Jitender Singh Malik
7. Shri Mangani Lal Mandal
8. Shri Pinaki Misra
9. Dr. Sanjeev Ganesh Naik
10. Shri Rajaram Pal
11. Shri Anantha Venkatarami Reddy
12. Shri Hamdullah Sayeed
13. Shri Adhalrao Patil Shivaji
14. Dr. Rajan Sushant
15. Shri Madhu Goud Yaskhi

SECRETARIAT

- | | | | |
|----|-------------------|---|-------------------|
| 1. | Shri P.K. Misra | - | Joint Secretary |
| 2. | Shri J.S. Chauhan | - | Director |
| 3. | Smt. Hema Joshi | - | Committee Officer |

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sittings held on 12.4.2010 & 24.6.2010.

3. The Committee considered and adopted this Report at their sitting held on 14.2.2011.

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 the Minutes of the Sixth and Eighth sittings of the Committee (2009-10) held on 12.4.2010 and 24.6.2010 respectively and Minutes of the Fifth sitting of the Committee (2010-11) held on 14.2.2011 relevant to this Report are included in Appendix-II.

**New Delhi;
March, 2011/Phalguna, 1932**

**P. KARUNAKARAN,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION**

Infirmities in the Restriction of Import, Manufacture and Use of Lindane (Gamma B.H.C.) Order, 2007 (SO 1472-E of 2007).

The Restriction of Import, Manufacture and Use of Lindane (Gamma B.H.C.) Order, 2007 (SO 1472-E of 2007) was published in Gazette of India, Extraordinary, Part – II, Section 3(ii) dated 29th August, 2007. On scrutiny of the aforesaid Order, the following infirmities were detected:-

- (i) The aforesaid Order was not laid on the Table of the House.
- (ii) The draft Order was made available to the public for inviting objections/suggestions on 25th October, 2005, whereas, the final Order was published on 29th August, 2007. Thus, there was a delay of about 1 year and 8 months in final notification of the Order.

The Ministry of Agriculture (Department of Agriculture & Cooperation) were requested to state the reasons for non-laying of the Order on the Table of the House and delay in publication of the final Order.

1.2 The Ministry in their response dated 16th February, 2009 stated as under:-

"In terms of section 36(3) of the Insecticides Act, 1968 every rule made by the Central Government under the Act shall be laid, as soon as may be after it is made, before each House of Parliament. Accordingly, this Department laid rules under this Act before each House of Parliament. However, the Orders issued under the Act from time to time could not be laid before the Parliament inadvertently. In view of the observations of the Committee on Subordinate Legislation, it has been decided to lay the Orders before each House of Parliament. Accordingly, the Order dated 29.8.2007 has been sent for laying before each House of Parliament.

In the instant case, the Department of Agriculture & Cooperation published a draft Order to prohibit the import, manufacture and all uses of Lindane (Gamma B.H.C.) except for termite control in buildings, termite control in sugarcane in agriculture and for exports vide notification No. SO 1532 dated 25.10.2005. A large number (about 333) of representations were received by the Department on the draft Order. A meeting was held in the Department on 24.1.06 to discuss the objections/suggestions received in respect of the draft Order through these representations. It was felt that as the problem of termite is prevalent in some other crops also, especially wheat grown in rainfed areas, it would be advisable if Lindane is allowed to be used in agricultural crops approved by the Registration Committee. Further, since there is limited choice of pesticides for control of termites in wood, it was felt that the use of Lindane for this purpose may be retained. It was decided that inter alia the comments of the Pesticide Associations and Lindane manufacturers on the draft Order may be obtained.

It took time to obtain comments from the Pesticide Associations and Lindane manufacturers on the draft Order, to consider the comments so obtained and to finalize the draft

Order in consultation with the Legislative Department, before the final notification was published in the gazette dated 29.8.07. The issue was complex and sensitive because on one hand most of the representations favoured use of Lindane for termite control and on the other hand, the fact that Lindane poses risk to health of humans and animals and its use has been banned in 52 countries and restricted in more than 33 countries had to be considered. Therefore, the process took time and there was delay in publishing the final notification.

In view of the above, it is requested that the matter may be placed before the Committee on Subordinate Legislation to condone the delay in publication of the final notification as well as in its laying before each House of Parliament.”

NON-LAYING OF THE ORDERS

1.3 It was noticed that the Restriction of Import, Manufacture and Use of Lindane (Gamma B.H.C.) Order, 2007 (SO 1472-E of 2007) had not been laid on the Table of the House and after being pointed out, the Order was subsequently laid on 26th February, 2009. Thus, there was a delay of one year and five months in laying of the Order on the Table of the House. The Committee have time and again stated that the Orders/Rules should be laid before the House within a period of 15 days after their publication in the Gazette, if the House is in session, and, if the House is not in session then as soon as possible (but in any case within 15 days) after the commencement of the following Session.

1.4 The Committee note that delay of one year and five months in laying of the Order reflects the casual approach of the Ministry in adhering to the time limit prescribed by the Committee for laying the Order on the Table of the House. Even though the Ministry have requested to condone the delay but no convincing reason has been put forward for such inordinate delay. The Committee seriously note that after being pointed out, the Order was subsequently laid on the Table of the House without any statement explaining the reasons for delay. The Committee emphasise that whenever Orders are laid on the Table of the House after an inordinate delay, an explanatory note giving the reasons for such delay should invariably be appended to the Orders. The Committee also impress upon the Ministry to now gear up their system so as to avoid recurrence of such lapses in future.

(Recommendation No. 1)

DELAY IN FINAL NOTIFICATION OF ORDERS

1.5 The Restriction of Import, Manufacture and Use of Lindane (Gamma B.H.C.) Order, 2007 (SO 1472-E of 2007) was made available to the public on 25th October, 2005 for inviting objections/suggestions thereon within a period of 45 days of publication of the draft Order. The final Order was published in the

Gazette of India on 29th August, 2007 i.e. after a delay of about one year and eight months. In this connection, the Committee have time and again emphasized that the final Rules/Orders should be published within a period of six months when large number of objections/suggestions are received from the public. In the extant case, the Ministry have stated that about 333 objections/suggestions were received by the Department on the draft Order.

1.6 The Committee take a serious note of the delay to the extent of one year and eight months in publication of the final Order. The Ministry had attributed the delay to the large number of representations received and also to the comments received from the Pesticide Associations and Lindane manufacturers on the draft Order. The Committee observe that such delay could have been reduced by advance planning and better coordination among the related Government Agencies/Departments. The Committee impress upon the Ministry to streamline their procedures and processes for adhering to the stipulated period of six months and to avoid such delay in the publication of the final Order in future.

(Recommendation No. 2)

II

Publication of the Foreign Currency Exchangeable Bonds Scheme as General Statutory Rules (GSR 89-E of 2008)

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The Issue of Foreign Currency Exchangeable Bonds Scheme, 2008 (GSR 89-E of 2008) was published in the Gazette of India, Extraordinary, Part – II, Section 3(i) dated 15.2.2008. It was observed that the statutory authority, under which the Scheme was made, had not been cited in the preamble to the Scheme. The Scheme had also not been laid on the Table of the House. The matter was, therefore, referred to the Ministry of Finance (Department of Economic Affairs) for their comments.

2.2 The Ministry of Finance (Department of Economic Affairs) vide their communication dated 8th May, 2009 stated as under :-

“the Foreign Currency Exchangeable Bonds Scheme, 2008 was issued under the general administrative powers of the Government and was not in terms of the provisions of an Act of Parliament. Issuing authority of the Scheme is Central Government (Ministry of Finance, Department of Economic Affairs). The name of statutory authority has not been mentioned in the preamble of the Scheme. Further, the Scheme is not required to be placed on the Table of the House.”

2.3 It may be seen that the reply of the Ministry was not satisfactory. It was not clear as to how the Scheme issued under the general administrative powers of the Government has been published in the Gazette of India as General Statutory Rules. It was also not clear whether the Ministry of Law and Justice had vetted the above Scheme for publication in Gazette of India as General Statutory Rules. Only the rules framed under the delegated authority of a statute needs to be notified in the Gazette as General Statutory Rules and laid in Parliament for scrutiny. The Ministry were therefore, requested to justify the publication of the Scheme as General Statutory Rules in the Gazette of India and to clarify whether the Ministry of Law & Justice (Legislative Department) vetted the Scheme before their publication in the Gazette of India. When asked to clarify the position in this regard, the Ministry of Finance (Department of Economic Affairs) vide their communication dated 14.7.09 & 11.9.09 stated as under :-

“ the fact brought out by the Lok Sabha Secretariat that only the rules framed under the delegated authority of a statute need to be notified in the Gazette as General Statutory Rules and laid in Parliament for scrutiny, has been noted for compliance in future. It is, further, stated that the Scheme was duly vetted by the Legislative Department, Ministry of Law & Justice”.

2.4 The Committee note that the Issue of Foreign Currency Exchangeable Bonds Scheme, 2008 (GSR 89-E of 2008) was published in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 15.2.2008. The statutory authority under which the Scheme was made had not been cited in the preamble to the Scheme. The Scheme was also not laid on the Table of the House. On being pointed out, the Ministry of Finance (Department of Economic Affairs) stated that the Scheme was issued under the general administrative powers of the Government and was not in terms of the provisions of an Act of Parliament. The issuing authority of the Scheme is Central Government (Ministry of Finance, Department of Economic Affairs). The name of statutory authority had not been mentioned in the preamble of the Scheme. It was further stated that the Scheme is not required to be placed on the Table of the House.

(Recommendation No. 3)

2.5 The reasoning given by the Ministry is not convincing in view of the fact that only the rules framed under the delegated authority of a statute need to be notified in the Gazette as General Statutory Rules and laid in Parliament for scrutiny. On being pointed out, the Ministry of Finance (Department of Economic Affairs) stated in a casual manner that the fact brought out by the Lok Sabha Secretariat has been noted for compliance in future. It appeared that the Ministry have not appreciated the relevance and significance of notifying the Scheme. The Committee urge the Ministry of Finance to take corrective steps to avoid such types of mistake. The Committee also urge the Ministry of Finance to be more careful in future while notifying the Scheme.

(Recommendation No. 4)

III

The Competition Commission of India (Form and Time of Preparation of Annual Report) Rules, 2008 (GSR 808-E of 2008).

The above rules were published in the Gazette of India, Extraordinary, Part-II Section 3, Sub-section (i) dated 21 November, 2008. On scrutiny of the above rules, it had been observed that various elements have been included in Part J of the Schedule which relates to administration and establishment matters. However since the Right to Information Act, 2005 has given an additional impetus for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, it would have been desirable if some relevant aspects viz., applications received under the Act *ibid*, reply forwarded to applicants etc., are also included in the Schedule.

3.2 The Ministry of Corporate Affairs vide their reply dated 14 September, 2009 in this regard stated that they have no objection in amending the rules to include relevant aspects of RTI in the Annual Report of the Competition Commission of India.

3.3 The Right to Information Act came into force in 2005 which made the access to the information much more easier and systematic. The Act particularly emphasised on public authorities *suo moto* declaration of information of general nature. Therefore, the Ministry were requested to incorporate some relevant aspects viz., applications received under the Act *ibid*, reply forwarded to applicants etc., in the Schedule. The handling of RTI cases and their speedy disposal certainly add to the performance of the public authorities.

3.4 The Committee note that by not including the relevant aspects of the RTI Act in the Annual Report of the Competition Commission of India, the Ministry have done away with inclusion of crucial exercise undertaken by the Competition Commission of India falling in the ambit of administrative matters. The Committee note with satisfaction that on being pointed out by them, the Ministry agreed to include the relevant aspects of RTI in the Annual Report of the Competition

Commission of India. The Committee desire that the Ministry of Corporate Affairs should bring about the necessary amendments in the aforesaid rules. The Committee also emphasise that the Ministry of Corporate Affairs should also foresee the inclusion of various instruments recently introduced by the Government for promoting transparency and accountability in the working of public authority in various official publications including Annual Report.

(Recommendation No. 5)

New Delhi;
March, 2011/Phalguna, 1932

P. KARUNAKARAN,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

APPENDIX –I

(Vide Para 4 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE SIXTEENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Summary of Recommendations</u>
1	2	3
1.	1.4	<p><u>Infirmities in the Restriction of Import, Manufacture and Use of Lindane (Gamma B.H.C.) Order, 2007 (SO 1472-E of 2007).</u></p> <p>The Committee note that delay of 1 year and 5 months in laying of the Order reflects the callous approach of the Ministry in adhering to the time limit prescribed by the Committee for laying the Order on the Table of the House. Even though the Ministry have requested to condone the delay but no convincing reason has been put forward for such inordinate delay. The Committee seriously note that after being pointed out, the Order was subsequently laid on the Table of the House without any statement explaining the reasons for delay. The Committee emphasise that whenever Orders are laid on the Table of the House after an inordinate delay, an explanatory note giving the reasons for such delay should invariably be appended to the Orders. The Committee also impress upon the Ministry to now gear up their system so as to avoid recurrence of such lapses in future.</p>
	1.6	<p>The Committee take a serious note of the delay to the extent of 1 year and 8 months in publication of final Order. The Ministry had attributed the delay to the large number of representations received and also to the comments received from the Pesticide Associations and Lindane manufacturers on the draft Order. The Committee observe that such delay could have been reduced by advance planning and better coordination among the related Government Agencies/Departments. The Committee impress upon the Ministry to streamline their procedures and processes for adhering to the stipulated period of six months and to avoid such delay in the publication of the final Order in future.</p>

2.		<p><u>Publication of the Foreign Currency Exchangeable Bonds Scheme as General Statutory Rules (GSR 89-E of 2008)</u></p> <p>2.4 The Committee note that the Issue of Foreign Currency Exchangeable Bonds Scheme, 2008 (GSR 89-E of 2008) was published in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 15.2.2008. The statutory authority under which the Scheme was made had not been cited in the preamble to the Scheme. The Scheme was also not laid on the Table of the House. On being pointed out, the Ministry of Finance (Department of Economic Affairs) stated that the Scheme was issued under the general administrative powers of the Government and was not in terms of the provisions of an Act of Parliament. The issuing authority of the Scheme is Central Government (Ministry of Finance, Department of Economic Affairs). The name of statutory authority had not been mentioned in the preamble of the Scheme. It was further stated that the Scheme is not required to be placed on the Table of the House.</p> <p>2.5 The reasoning given by the Ministry is not convincing in view of the fact that only the rules framed under the delegated authority of a statue need to be notified in the Gazette as General Statutory Rules and laid in Parliament for scrutiny. On being pointed out, the Ministry of Finance (Department of Economic Affairs) stated in a casual manner that the fact brought out by the Lok Sabha Secretariat has been noted for compliance in future. It appeared that the Ministry have not appreciated the relevance and significance of notifying of the Scheme. The Committee urge the Ministry of Finance to take corrective steps to avoid such types of mistake. The Committee also urge the Ministry of Finance to be more careful in future while notifying the Scheme.</p>
3.		<p><u>The Competition Commission of India (Form and Time of Preparation of Annual Report) Rules, 2008 (GSR 808-E of 2008).</u></p> <p>3.4 The Committee note that by not including the relevant aspects of the RTI Act in the Annual Report of the Competition Commission of India, the Ministry have done away with inclusion of crucial exercise undertaken by the Competition Commission of India falling in the ambit of administrative matters. The Committee note with satisfaction that on being pointed out by them, the Ministry agreed to include the relevant aspects of RTI in the Annual Report of the Competition Commission of India. The Committee desire that the Ministry of Corporate Affairs should bring about the necessary amendments in the aforesaid rules. The Committee also emphasise that the Ministry of Corporate Affairs should also foresee the inclusion of various instruments recently introduced by the Government for promoting transparency and accountability in the working of public authority in various official publications including Annual Report.</p>

APPENDIX –II

(Vide Para 5 of the Introduction of the Report)

EXTRACTS FROM THE MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2009-2010)

The Committee sat on Monday, 12 April, 2010 from 1400 to 1500 hours in Chairman's Room No.143, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Shri Rajen Gohain
3. Shri D.B. Chandre Gowda
4. Smt. Paramjit Kaur Gulshan
5. Shri Mangani Lal Mandal
6. Shri Pinaki Misra
7. Shri Rajaram Pal
8. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri Raju Srivastava - Deputy Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee.
3. XX XX XX
4. Thereafter, the Committee took up for consideration the following memoranda:-
 - (1) **Memorandum No. 14** - Infirmities in the Restriction of Import, Manufacture and Use of Lindane (Gamma B.H.C) Order, 2007 (SO 1472-E of 2007).
 - (2) **Memorandum No. 15** - Publication of the Foreign Currency Exchangeable Bonds Scheme as General Statutory Rules (GSR 89-E of 2008).
 - (3) **Memorandum No. 16** – The Competition Commission of India (Form and Time of Preparation of Annual Report) Rules, 2008 (GSR 808-E of 2008).
5. After deliberations, the Committee decided to incorporate the points raised in Memoranda at Sl. No. (2) and (3) in their Report to be presented to the House. Regarding Memorandum at Sl. No. 1, the Committee note that the Restriction of Import, Manufacture and Use of Lindane (Gamma B.H.C) Order, 2007 was laid on the Table of the House after a delay of about 17 months that too after being pointed out by the Committee. Similarly, there was a delay of about 20 months in final notification of the Order. The Committee had earlier recommended that Orders/ Rules should be laid before the House within a period of 15 days after their publication in the Gazette. Besides, specific recommendations had also been made by the Committee that final Rules/ Orders should be published within a period of six months when large number of objections/ suggestions are received from the public. In spite of above-stated recommendations of the Committee, the Ministries/ Departments do not adhere to the time-limit on the aspects of laying of orders on the Table of the House and/or final notification of Orders and instead give unconvincing reasoning to justify the delay on these counts. The Committee lamented the brazen disregard of the Committee by various Ministries/Departments of the Government of India. The Committee, therefore, desired that the matter may be taken up with the Ministry of Agriculture (Department of Agriculture & Cooperation) to supply copies of the communication on the aspects of laying and final notification of Orders *ibid*.

The Committee then adjourned.

EXTRACTS FROM THE MINUTES OF THE EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2009-2010)

The Committee sat on Thursday, 24 June, 2010 from 1100 to 1200 hours in Committee Room No.53, Parliament House , New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Shri Paban Singh Ghatowar
3. Shri Rajen Gohain
4. Shri D. B. Chandre Gowda
5. Smt. Paramjit Kaur Gulshan
6. Shri Pinaki Misra
7. Shri Sanjeev Ganesh Naik
8. Shri Rajaram Pal
9. Shri Hamdulla Sayeed

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri J.S. Chauhan - Director
3. Shri S.C. Kaliraman Additional Director
4. Shri Raju Srivastava - Deputy Secretary

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

3. XX XX XX

4. Thereafter, the Committee took up for consideration the following memoranda:-

(i) **Memorandum No. 14** - Infirmities in the Restriction of Import, Manufacture and Use of Lindane (Gamma B.H.C) Order, 2007 (SO 1472-E of 2007).

(ii) XX XX XX

5. After deliberations, the Committee decided to incorporate the points raised in Memoranda Nos. 14 in their Report to be presented to the House.

6. XX XX XX

The Committee then adjourned.

MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2010-2011)

The Committee sat on Monday, 14th February, 2011 from 1400 to 1500 hours in Committee Room No. 53, Parliament House, New Delhi.

PRESENT

1. Shri Paban Singh Ghatowar In the Chair

MEMBERS

- 2 Smt. Paramjit Kaur Gulshan
3. Shri Mangani Lal Mandal
4. Dr. Sanjeev Ganesh Naik
5. Shri Rajaram Pal
6. Shri Hamdullah Sayeed
7. Shri Madhu Goud Yaskhi

SECRETARIAT

- | | | | |
|----|-------------------------|---|---------------------|
| 1. | Shri Raj Shekhar Sharma | - | Joint Secretary |
| 2. | Shri J.S. Chauhan | - | Director |
| 3. | Shri S.C. Kaliraman | - | Additional Director |

2. At the outset, in the absence of Chairman, Members of the Committee chose Shri Paban Singh Ghatowar, MP, to act as Chairman for the sitting of the Committee under rule 258(3) of Rules of Procedure and Conduct of Business in Lok Sabha.

3. Thereafter, the Committee took up for consideration the draft 'Sixteenth Report' and adopted the same without any modifications. The Committee also authorized the Chairman to present the same to the House.

The Committee then adjourned.