

**COMMITTEE ON SUBORDINATE LEGISLATION**  
**(FIFTEENTH LOK SABHA)**  
**(2011-2012)**

**TWENTY FOURTH REPORT**

**[ACTION TAKEN REPORT OF THE COMMITTEE ON THE RECOMMENDATIONS/  
OBSERVATIONS CONTAINED IN THIRD REPORT (FIFTEENTH LOK SABHA)]**

**(PRESENTED ON 21.3.2012)**

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**LOK SABHA SECRETARIAT**

**NEW DELHI**

**March, 2012/Phalguna,1933 (Saka)**

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION**  
**(2011-2012)**

1. Shri P. Karunakaran Chairman
2. Shri Ghanshyam Anuragi
3. Shri Praveen Singh Aron
4. Shri Kalyan Banerjee
5. Shri E.T. Mohammed Basheer
6. Shri Ramen Deka
7. Shri Mahesh Joshi
8. Shri Virender Kashyap
9. Shri Jitender Singh Malik
10. Dr. Thokchom Meinya
11. Ms. Mausam Noor
12. Shri Gajendra Singh Rajukhedi
13. Dr. Bhola Singh
14. Shri Vijay Bahadur Singh
15. Shri A.K.S. Vijayan

**SECRETARIAT**

1. Shri A. Louis Martin - Joint Secretary
2. Shri S.C. Chaudhary - Director
3. Shri Sundar Prasad Das - Deputy Secretary
4. Shri Krishendra Kumar - Under Secretary

(iii)

## INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Twenty Fourth Action Taken Report.

2. This Report relates to the action taken on the recommendations of the Committee contained in the Third Report (2009-2010) (Fifteenth Lok Sabha) which was presented to Lok Sabha on 16.3.2010.

3. The Committee considered and adopted this Report at their sitting held on 21 February, 2012.

4. The summary of recommendations contained in the Third Report (15th Lok Sabha) and action taken reply of the Government thereon have been reproduced in Appendix I of the Report.

5. Extracts from the Minutes of the sitting of the Committee relevant to this report are brought out in Appendix II.

6. An analysis of the action taken by Government on the recommendations contained in the Third Report of the Committee (15th Lok Sabha) is given in Appendix III.

New Delhi;  
March, 2012  
Phalgun, 1933 (Saka)

**P. KARUNAKARAN**  
*Chairman,*  
*Committee on Subordinate Legislation*

## REPORT

This Report of the Committee on Subordinate Legislation (2011-12) deals with the action taken by Government on the recommendations contained in their Third Report (Fifteenth Lok Sabha) which was presented to Lok Sabha on 16.3.2010. The Third Report dealt with the following Chapters: -

- I. The Intellectual Property Appellate Board (Salaries and Allowances payable to, and other terms and conditions of service of Chairman, Vice-Chairman and Members) Amendment Rules, 2007 (GSR 623-E of 2007).
- II. The Transplantation of Human Organs (Amendment) Rules, 2008 (GSR 571-E of 2008).
- III. Shortcomings in the Credit Information Companies (Regulation) (Removal of Difficulties) Order, 2008 (SO 201 of 2008).

2. As per practice, the shortcomings observed during scrutiny in the above Rules/Orders, were brought to the notice of the Ministries concerned for their comments/necessary corrective action. The respective Ministries accepted those shortcomings and took necessary action for their rectification. These shortcomings in the Rules/Orders alongwith the action assured by the Ministry concerned were included in the Third Report (Fifteenth Lok Sabha) alongwith the recommendations made thereon by the Committee on Subordinate Legislation. These recommendations were forwarded to the respective Ministries for compliance. A statement showing the Action Taken by the Government on the recommendations contained in the Third Report is given in Appendix-I.

3. **The Committee note with satisfaction that all the seven recommendations contained in the Third Report (Fifteenth Lok Sabha) have been accepted by the Government. With regard to three recommendations (Para Nos. 1.3, 1.5 and 3.7) of the Committee pertaining to delay in final notification of the draft Rules, absence of explanatory memorandum for explaining the reasons for giving retrospective effect to the rules and delay in laying of Rules respectively, the Government have noted the Committee's recommendations with an assurance that they would be strictly observed in future. With regard to the other four recommendations (Paras 1.7, 2.3, 2.4 and 3.4), the Committee appreciate the Government's action in issuing corrigendum to rectify the lacunae observed in the Rules.**

New Delhi;  
February, 2012  
Magha, 1933 (Saka)

**P. KARUNAKARAN**  
*Chairman,*  
*Committee on Subordinate Legislation*

## **APPENDIX – I**

(vide Para 4 of Introduction of the Report )

### **STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/OBSERVATIONS CONTAINED IN THE THIRD REPORT OF THE COMMITTEE (15th Lok Sabha)**

#### **I. The Intellectual Property Appellate Board (Salaries and Allowances payable to, and other terms and conditions of service of Chairman, Vice-Chairman and Members) Amendment Rules, 2007 (GSR 623-E of 2007).**

##### **Recommendation (Paras 1.3 & 1.5)**

1.3 The Committee note that there was a gap of 2 ½ years in the final notification of the Intellectual Property Appellate Board (Salaries and Allowances payable to, and other terms and conditions of service of Chairman, Vice-Chairman and Members) Amendment Rules, 2007 (GSR 623-E of 2007). The Committee do not approve the Ministry's justification that the time gap in the final notification of the above said Rules was unintentional and beyond the control of the Department as the delay had occurred in the process of disposal of suggestions/objections received and in consulting/obtaining approval of various Ministries/Departments. The Committee have time and again recommended that in cases where no objections/suggestions on the draft rules were forthcoming, the final rules should be published within a period of three months and in cases where a large number of objections/suggestions were received, the gap should not be more than six months. The Committee, therefore reiterate that these recommendations and guidelines should be observed by the Ministry scrupulously in all such cases with a view to minimizing the gap between the publication of draft rules and their final notification.

1.5 The Intellectual Property Appellate Board (Salaries and Allowances payable to, and other terms and conditions of service of Chairman, Vice-Chairman and Members) Amendment Rules, 2007 (GSR 623-E of 2007) notified on 24.9.2007 were given retrospective effect from September, 2003. No explanatory memorandum as recommended by the Committee in their 2<sup>nd</sup> Report, 4<sup>th</sup> Lok Sabha and 9<sup>th</sup> Report, 5<sup>th</sup> Lok Sabha had however been appended thereto explaining the reasons for giving retrospective effect. The Ministry's plea that the Rules have been made under Trade Marks Act, 1999 which is for the benefit of only Chairman, Vice-Chairman and Members of the Board and hence there is nobody who would be adversely affected by retrospective effect of amendment rules from September, 2003, is not at all convincing. The Committee understand that the benefit is meant for some specific posts yet they feel that the rules are given retrospective effect only under unavoidable circumstances and therefore an explanation in the rules itself or by way of a foot-note to the relevant rule is required to be indicated stating that no one would be adversely affected by it. The Committee urge the Ministry to adhere to the recommendation of the Committee on Subordinate Legislation while framing such rules in future.

## **Reply of the Ministry**

The recommendations and guidelines given by the Committee would be strictly observed in future.

[Ministry of Commerce & Industry (Department of Industrial Policy and Promotion)  
OM No. 8(28)/2003-IPR.I (IPAB) dated 13.6.2010]

## **Recommendation (1.7)**

The Committee note that no foot-note giving particulars regarding publication of Principal Rules and subsequent amendments has been appended to the Intellectual Property Appellate Board (Salaries and Allowances payable to, and other terms and conditions of service of Chairman, Vice-Chairman and Members) Amendment Rules, 2007 (GSR 623-E of 2007). The Committee are not convinced with the reply of the Ministry that if the Lok Sabha Secretariat feels, a corrigendum may be issued in this regard. The Committee have emphasized time and again that in order to facilitate easy referencing, all amendment rules should contain a foot-note giving particulars of preceding amendments. The rules ought to indicate the particulars of publication of Principal Rules and the subsequent amendments made thereto, without which it is difficult to trace the particulars of earlier amendments made in this regard. The Committee, therefore, desire the Ministry of Commerce & Industry to append the foot-note and remain cautious in future to ensure that notification issued by them are complete in all respects.

## **Reply of the Ministry**

The Ministry forwarded copies of the Corrigendum dated 13<sup>th</sup> July, 2010 giving particulars regarding publication of Principal Rules and subsequent amendment notified by the Department, in the Gazette, in consultation with Department of Legal Affairs.

[Ministry of Commerce & Industry (Department of Industrial Policy and Promotion)  
OM No. 8(28)/2003-IPR.I (IPAB) dated 13.6.2011]

## **II. The Transplantation of Human Organs (Amendment) Rules, 2008 (GSR 571-E of 2008)**

### **Recommendation (Paras 2.3 & 2.4)**

2.3 The Committee note that the entry under Rule 2 was not correct, but it was noticed with satisfaction that the Ministry have initiated action for issuing a corrigendum to rectify the mistake that it should be – “in the Transplantation of Human Organs Rules, 1995” instead of “In the Transplantation of Human Organs (Amendment) Rules, 2008”. The Committee urge the Ministry to be more careful in future while framing the Amendment Rules and also desire that printed copy of the corrigendum may be furnished.



2.4 The Committee also note that the entry under Rule 6F(i) stipulates that 'the Authorization Committee shall expedite its decision making process and use its discretion judiciously and pragmatically in all such cases where, the patient requires immediate transplantation'. The Committee feel that the use of discretion may lead to arbitrary powers even though it has been qualified by the use of terminology 'judiciously' and 'pragmatically' which are not quantifiable. On being pointed out, the Ministry of Health & Family Welfare (Department of Health & Family Welfare) had simply stated that the Authorization Committee consists of several members and takes its decision unanimously when a patient requires immediate transplantation. Thus, the use of discretion may not lead to any arbitrary action/decision. The Ministry's reply is not convincing. The Committee have time and again stressed in the past that in case of the use of discretionary powers, there should be a provision in the rules for recording of reasons to minimize the misuse of the powers. The Committee desire the Ministry to amend the rule to the effect that the Authorization Committee may exercise its discretion judiciously and pragmatically after recording the reasons in all such cases where the patient requires immediate transplantation. The Committee may also be apprised of the action taken in this regard..

### **Reply of the Ministry**

This Ministry has rectified both the mistakes observed by Committee on Subordinate Legislation In the Transplantation of Human Organs (Amendment) Rules, 2008. The corrigendum has been notified in Gazette of India, Extraordinary vide GSR No. 577-E dated 5.7.2010.

[Ministry of Health and Family Welfare  
(Department of Health and Family Welfare)  
OM S-12011/12/2007-MS (Pt.) dated 31.3.2010]

### **III. Shortcomings in the Credit Information Companies (Regulation) (Removal of Difficulties) Order, 2008 (SO 201 of 2008).**

#### **Recommendation (Para 3.4)**

The Committee note that there is indeed no material difference between the two forms of prescription, nevertheless, since the date of enforcement of the Order is of utmost importance, there should be absolute clarity in the prescription of such a date and therefore it is felt that prescription of a 'specified date' would leave no scope for any ambiguity in the matter. The Committee earnestly desire that the Ministry of Finance (Department of Financial Services) should be careful while framing the Rules and avoid the usage of vague expression in the Rules/Regulations/Orders. The Committee also desire the Ministry to amend the order to make it more precise, self-contained and devoid of ambiguity.

### **Reply of the Ministry**

As directed by the Committee, Department of Financial Services has issued a Corrigendum on 28.4.2010, amending the Credit Information Companies (Regulation) (Removal of Difficulties) Order, 2008 dated 24<sup>th</sup> January, 2008. The Ministry enclosed a copy of the Corrigendum. Observations of the Committee have been noted for compliance in future and, all concerned have been advised to be more careful in this regard.

[Ministry of Finance (Department of Financial Services)  
O.M. No 21/1/2009-BOA dated 30.4.2010]

### **Recommendation (Para 3.7)**

The Committee note that the Credit Information Companies (Regulation) (Removal of Difficulties) Order, 2008 was laid on the Table of the House after a delay of more than 9 months. The Committee on Subordinate Legislation in their Fourth Report (Third Lok Sabha) made a specific recommendation that all 'Rules' or 'Orders' 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, the 'Orders' should be laid on the Table of the House as soon as possible (but in any case within 15 days) after the commencement of the following session. The Committee observe that the reasons advanced by the Ministry that the copies of the published Notification were not available with them indicate the absence of procedural safeguards to avoid such type of omission. Although, the Order was laid on the Table of the House on 31 October, 2008 alongwith the 'Delay Statement', the Committee would expect the Ministry to exercise extreme care in laying of Notifications within the stipulated time and to evolve procedural safeguards so as to avoid such type of omission on their part in future.

### **Reply of the Ministry**

Delay in laying the said Notification in the Parliament, within the stipulated period, is sincerely regretted. Observations of the Committee have been noted for compliance in future. All concerned have been advised to be more careful in this regard.

[Ministry of Finance (Department of Financial Services)  
O.M. No 21/1/2009-BOA dated 30.4.2010]

## **APPENDIX-II**

(vide Para 5 of Introduction of the Report )

### **EXTRACTS FROM THE MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2011-2012)**

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The Committee sat on Tuesday, 21<sup>th</sup> February, 2012 from 1430 to 1515 hours in Chairman's Room No. '143', Parliament House, New Delhi.

#### **PRESENT**

1. Shri P. Karunakaran Chairman

#### **MEMBERS**

2. Shri Ramen Deka
3. Shri Mahesh Joshi
4. Dr. Bholu Singh
5. Shri Vijay Bahadur Singh

#### **SECRETARIAT**

1. Shri A. Louis Martin - Joint Secretary
2. Shri S.C. Chaudhary - Director
3. Shri Srinivasulu Gunda - Additional Director
4. Shri Krishendra Kumar - Under Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee (2011-12).

3. The Committee, then, considered the draft 'Twenty Fourth Action Taken Report' and adopted the same without any modification. The Committee also authorized the Chairman to present the same to the House.

4. xx xx xx

5. xx xx xx

The Committee then adjourned.

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

### APPENDIX-III

(vide para 6 of Introduction of the Report)

#### ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE THIRD REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTEENTH LOK SABHA)

I.	Total No. of recommendations/observations made	7
II.	Recommendations that have been accepted by the Government [ <u>vide</u> recommendations at Sl. Nos. 1.3, 1.5 1.7, 2.3, 2.4, 3.4 & 3.7]	7
III.	No. of recommendations which the Committee do not want to pursue in view of Government reply	Nil
IV.	Percentage of recommendations accepted	100%