

**COMMITTEE ON SUBORDINATE LEGISLATION**  
**(2014-2015)**

**(SIXTEENTH LOK SABHA)**

**SECOND REPORT**

**(PRESENTED TO LOK SABHA ON 19.12.2014)**

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**LOK SABHA SECRETARIAT**

**NEW DELHI**

**December, 2014 / Agrahayana, 1936 (Saka)**

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## **C O N T E N T S**

	Para No.	Page No.
COMPOSITION OF THE COMMITTEE.....	(iii)	
INTRODUCTION.....	(v)	

## **R E P O R T**

I. The Protection of Plant Varieties and Farmers' Rights (Second Amendment) Rules, 2009 (GSR 783-E of 2009).	1.1 - 1.3	1
II. Delay in publication of the Ministry of Agriculture, Central Institute of Fisheries, Nautical and Engineering Training Cochin, Director Recruitment Rules, 2010 (GSR 847-E of 2010).	2.1 – 2.5	3
III. Infirmities in the Vegetable Oil Products Production and Availability (Regulation) Order, 2011 (GSR 664-E of 2011).	3.1 – 3.8	5

## **A P P E N D I C E S**

I. Summary of main observations/recommendations made by the Committee		6
II. Extracts from the Minutes of the Second Sitting of the Committee (2014-15) held on 3.11.2014, and Minutes of the Third Sitting of the Committee (2014-15) held on 18.12.2014		9

**COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION (16<sup>th</sup> LOK SABHA)**  
**(2014-2015)**

1. Shri Dilipkumar Mansukhlal Gandhi      Chairperson

**Members**

2. Shri Idris Ali  
3. Shri C. R. Chaudhary  
4. Shri P. P. Chaudhary  
5. Shri Shyama Charan Gupta  
6. Shri Jhina Hikaka  
7. Shri S. P. Muddahanumegowda  
8. Shri V. Panneerselvam  
9. Shri Prem Das Rai  
10. Shri Chandu Lal Sahu  
11. Shri Ram Prasad Sarmah  
12. Adv. Narendra Keshav Sawaikar  
13. Shri Ram Kumar Sharma  
14. Shri Nandi Yellaiah  
15. Vacant

**SECRETARIAT**

- |    |                      |   |                            |
|----|----------------------|---|----------------------------|
| 1. | Shri R.S. Kambo      | - | Joint Secretary            |
| 2. | Shri Raju Srivastava | - | Additional Director        |
| 3. | Smt. Vidya Mohan     | - | Senior Committee Assistant |

(iii)

## **INTRODUCTION**

I, the Chairperson, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Second Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sittings held on 3.11.2014.

3. The Committee considered and adopted this Report at their sitting held on 18.12 2014

4. For facility of reference and convenience, observations/recommendations 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 Second sitting of the Committee (2014-15) held on 3.11.2014 and Third Sitting of the Committee (2014-15) held on 18.12.2014 relevant to this Report are included in Appendix-II of the Report.

**New Delhi;  
18 December, 2014**  
**27 Agrahayana, 1936 (Saka)**

**DILIPKUMAR MANSUKHLAL GANDHI**  
**Chairperson,**  
***Committee on Subordinate Legislation***

## REPORT

### I

#### **THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS (SECOND AMENDMENT) RULES, 2009 (GSR 783-E OF 2009).**

The Protection of Plant Varieties and Farmers' Rights (Second Amendment) Rules, 2009 (GSR 783-E of 2009) which was published in the Gazette of India, Extraordinary, Part-II, Section 3(i) on 27.10.2009 was laid on the Table of the House only on 30<sup>th</sup> November, 2010 after an inordinate delay, that too after being pointed out to the Ministry of Agriculture (Department of Agriculture and Cooperation). The Rules should have been laid on the Table of the House within 15 days after the commencement of the following Session, i.e. in the Winter Session of 2009. The time limit was not adhered to in this case. According to the recommendation of the Committee on Subordinate Legislation (para 38 of 6<sup>th</sup> Report - 3<sup>rd</sup> Lok Sabha), whenever Orders are laid on the Table after an inordinate delay, an explanatory note giving the reasons for such delay should be appended to the Orders when so laid. No such explanatory note was appended to when the Orders were laid on the Table of the House.

1.2 The Ministry of Agriculture (Department of Agriculture and Cooperation) did not furnish any reply in this regard. However, it has been ascertained from Lok Sabha Bulletin Part-I dated 30<sup>th</sup> November, 2010 that the aforesaid order has been laid on the Table of the House. It appears that no explanatory note giving the reasons for delay in laying was appended to the Order when it was laid in the House.

1.3 The Committee in regard to above observe that the Protection of Plant Varieties and Farmers' Rights (Second Amendment) Rules, 2009 (GSR 783-E of 2009) were laid on the Table of the House on 30 November, 2010 after an inordinate delay of more than one year after its publication in the Gazette, that too, on being pointed out to the concerned

Ministry of Agriculture (Department of Agriculture and Cooperation). The Committee observe that neither any explanatory note giving the reasons for such delay was appended to the Orders when so laid as per the recommendation of the Committee nor any reply furnished by the Ministry in this regard. The Committee take a serious note of the casual attitude of the Ministry towards the Committee's recommendation on such an important Parliamentary obligation of laying of 'Orders', which are under their administrative control. The Committee, therefore, desire that the Ministry may justify their inordinate delay in laying of such rules and furnish their reasons of non-appending of the delay statement thereof at the time of laying. The Committee also desire that the Ministry to intimate them about the necessary steps taken by them to avoid recurrence of such lapses in future.

## II

### **DELAY IN PUBLICATION OF THE MINISTRY OF AGRICULTURE, CENTRAL INSTITUTE OF FISHERIES, NAUTICAL AND ENGINEERING TRAINING COCHIN, DIRECTOR RECRUITMENT RULES, 2010 (GSR 847-E OF 2010).**

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The Ministry of Agriculture, Central Institute of Fisheries, Nautical and Engineering Training Cochin, Director Recruitment Rules, 2010 (GSR 847-E of 2010) was published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 20.10.2010. On scrutiny of the above Rules, it was noticed that the Rules were sent for publication on 5 October, 2010 whereas the same were published on 20 October, 2010 i.e. after a delay of 15 days. The Rules published in the Extraordinary Gazette, should be published on the same day on which it was sent for publication. The Ministry of Agriculture (Department of Animal Husbandry, Dairying and Fisheries) was requested to furnish their comments in this regard.

2.2 The Ministry of Agriculture (Department of Animal Husbandry, Dairying and Fisheries) vide their OM dated 21 April, 2011 has stated as under:-

“Initially the above said Rules were sent to Government of India Press on 5.10.2010 for publication in the official Gazette of India, Part-II, Section 3, Subsection (i). However, later it was felt that the published copy of the above rules is required urgently and it was decided to get it published in the Extraordinary Gazette and accordingly a letter dated 15.10.2010 was written to Government of India Press and accordingly, they published it in their 20<sup>th</sup> October, 2010 publication.”

2.3 It may be seen that the aforementioned Rules pertain to the Recruitment of a Director in the Ministry of Agriculture, Central Institute of Fisheries, Nautical and Engineering Training, Cochin, the publication of which was stated to have been required urgently. However, as per the reply of the Ministry, the urgent requirement of the published copy of the rules was realised after the rules were already dispatched for publication in the Ordinary Gazette and a decision was taken to get it published in the Extraordinary Gazette at the last moment which resulted in the delay in publication. This appears to indicate lack of planning and casual approach in



matters pertaining to publication of statutory orders. The aforesaid Recruitment Rules were to become effective only after their notification in the official gazette and hence the delay in their publication delays their enforcement which may affect the public. Moreover, the aforesaid delay appears to render the very requirement of urgency infructuous as the Extraordinary Gazette which is supposed to be published on the same day got delayed by 15 days.

**2.4 The Committee note that the Ministry of Agriculture, Central Institute of Fisheries, Nautical and Engineering Training Cochin, Director Recruitment Rules, 2010 (GSR 847-E of 2010) which ought to have been notified in the Extraordinary Gazette on the same day, were sent for publication on 5 October, 2010 and finally published on 20 October, 2010, causing a delay of 15 days. The Committee observe that the Ministry simply cited the reason that initially the Rules were sent to the press for publication in the Gazette of India, Part-II, Section 3(i) and later when it was felt that the published copy was required urgently, it was decided to get them published in the Extraordinary Gazette entailing a delay of 15 days. The Committee strongly deplore the Ministry's casual approach and lack of planning in matters of publication of statutory orders, that too pertaining to the recruitment of a senior level post of a Director resulting in the delay, which could have been avoided had the Ministry taken their responsibility a bit more seriously.**

**2.5 The Committee further observe that it is also the Ministry's responsibility to ensure that the matters contained in the Rules which are certified to be fit for publication in the Extraordinary Gazette are of urgent nature and having certified as such, it should be ensured that these rules are published on the same day. The Committee, therefore, desire the Ministry to apprise them about the reasons that caused delay and also about the measures adopted by them to establish a mechanism to ensure avoidance of recurrence of such lapses in future.**

### III

#### **INFIRMITIES IN THE VEGETABLE OIL PRODUCTS PRODUCTION AND AVAILABILITY (REGULATION) ORDER, 2011 (GSR 664-E OF 2011).**

The Vegetable Oil Products Production and Availability (Regulation) Order, 2011 (GSR 664-E of 2011) was published in the Gazette of India, Extraordinary, Part-II, Section 3(i) on 7.9.2011. On scrutiny of the Order, infirmities were observed in Regulation 6 and Regulation 7

##### (a) Regulation 6

“Appeal.- Any person who is aggrieved by the order of fine under clause 4 or cancellation of registration under clause 5 may make an appeal to the Appellate Authority appointed by the Central Government against such order within a period of thirty days of the receipt of such order and the decision of the Appellate Authority shall be final.”

##### (b) Regulation 7

“The Central Government may, in public interest, for reasons to be recorded in writing, in ‘specific circumstances’ and ‘for a specified period’, relax any or all of the requirements specified in this order for such manufacture, stocking or sale of any variety of vegetable oil products.”

3.2 It was observed that the Regulation 6 provides for appeal by the aggrieved person within a period of 30 days of the receipt of Order of fine or cancellation of registration. It, however, does not provide time limit for disposal of appeal by the Appellate Authority. Further, it was observed that the use of words ‘Specific Circumstances’ and ‘specified period’ in Regulation 7 is ambiguous and needed to be defined as these could give an element of discretion for misuse to the authorities.

3.3 The Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) was accordingly requested to furnish their comments on the aforesaid points. The Ministry vide their OM No. 327/1/2008-CD (Pt.) dated 11 January, 2013 submitted that they would bring an amendment in Regulation 6 to give a time frame for the disposal of

appeal by the Appellate Authority. The words 'decision of the Appellate Authority shall be final' used in Regulation 6 would be substituted by "Appellate Authority shall dispose of the appeal within a period of six months from the date of filing of the appeal".

3.4 As regards to use of words 'specific circumstances' and 'specific period' in Regulation 7 the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) have submitted vide their OM dated 7 March, 2013 that:-

"In this connection, it is mentioned that under above order under reference every producer who intends to produce, stock for sale or offer for sale vegetable oil, vegetable oil product, solvent extracted oil, de-oiled meal or edible flour is required to register and submit monthly return of their production of vegetable oil and vegetable oil products.

Since Regulation -7 of the Order, provide for some relaxation of the provisions of the said order under 'specific circumstances' for specified period. 'Specific circumstances' may include shortage of edible oil in the country, necessity of import of edible oil, management of scheme for distribution of subsidized imported edible oils, augment the availability of edible oil etc. to meet domestic demand. Therefore, the word 'specific circumstances' do not give discretion to the authorities.

Further, it is stated that under Regulation-7 of the Order, the word 'specified period' denotes the fixed time period during which, specific circumstances may come to an end. It means that authorities cannot relax the requirements of the orders beyond a specified period. These words limits the discretion of the authorities. Therefore, the word specified period do not give discretionary powers, rather these words may lessen the discretion of the authorities".

3.5 The Vegetable Oil Products Production and Availability (Regulation) Order, 2011 notified by the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) (Directorate of Vanaspati, Vegetable Oils and Fats) on 7 September, 2011 did not stipulate any time-limit for disposal of appeal by the appellate authority in Regulation 6 of the order providing for appeal by the aggrieved person to the Appellate Authority within a period of 30 days of the receipt of the Order. Further, the use of phrases 'specific circumstances' and 'specific period' in Regulation 7 are ambiguous and need to be defined so

that there is no scope for misuse by authorities. The Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) (Directorate of Vanaspati, Vegetable Oils and Fats) on being pointed out agreed to bring out an amendment to lay down the time limit of six months for disposal of appeal by the Appellate Authority.

3.6 With respect to the use of words 'specific circumstances' and 'specified period' in Regulation 7, the Ministry have stated that the words "specific circumstances" do not give discretion to the authorities and the words "specific period" do not give discretionary power rather these words lessen the discretion of the authorities. Admittedly, the words do provide discretionary powers. Unless the broad contours of the phrases "specific circumstances" and "specific period" are laid down in the Regulation, there would be scope for discretion to interpret them as per convenience. The Committee have repeatedly stressed that the provision of legislation including subordinate legislation should be spelt out with precision, and as far as possible, the use of vague expression, which may be interpreted differently by different persons should be avoided.

**3.7 The Committee note that Regulation 6 of the Vegetable Oil Products Production and Availability (Regulation) Order, 2011 (GSR 664-E of 2011) of the notification issued by the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) (Directorate of Vanaspati, Vegetable Oils and Fats) provides for appeal by the aggrieved person against the order of fine or cancellation of registration. The Regulation, however, does not stipulate any time limit for disposal of the appeal by the appellate authority. On being pointed out, the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) have proposed to amend the said order so as to specify a period of 90 days from the date of filing of the appeal for disposal of appeals by the Appellant Authority. The Committee, therefore, recommend that the Ministry should exercise utmost care while drafting**

rules/regulations in future. The Committee also urge the Ministry to bring out the amendment at the earliest.

3.8 As per Regulation 7 of the order, the Central Government may, in public interest, relax in 'specific circumstances' for 'specific period' any or all of the requirements specified in this Order for such manufacturer, stocking or sale of any variety of vegetable oil products. The Committee note that the Regulation has not indicated the circumstances in which this power can be exercised by the authorities and the maximum duration for which the relaxation can be applied. The Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) have clarified that 'specific circumstances' may include shortage of edible oil in the country, necessity of import of edible oil, management of scheme for distribution of subsidized imported edible oils, augment the availability of edible oil etc. to meet domestic demand. The Committee urge the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) (Directorate of Vanaspati, Vegetable Oils and Fats) to incorporate this clarification in the regulation. The regulation should also indicate the maximum duration not exceeding six months for which the relaxation can be applied. The Committee further recommend that the requisite amendment to the order be carried out at the earliest and the Committee be apprised of the action taken in this regard.

New Delhi;  
18 December, 2014  
27 Agrahayana, 1936 (Saka)

DILIPKUMAR MANSUKHLAL GANDHI  
Chairperson,  
*Committee on Subordinate Legislation*

## APPENDIX I

(Vide Para 4 of the Introduction of the Report)

### SUMMARY OF RECOMMENDATIONS MADE IN THE SECOND REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(SIXTEENTH LOK SABHA)

Sl.No.	Reference to Para No. in the Report	Summary of Recommendations
1	2	3
1.	1.3	<p>The Protection of Plant Varieties and Farmers' Rights (Second Amendment) Rules, 2009 (GSR 783-E of 2009).</p> <p>The Committee in regard to above observe that the Protection of Plant Varieties and Farmers' Rights (Second Amendment) Rules, 2009 (GSR 783-E of 2009) were laid on the Table of the House on 30 November, 2010 after an inordinate delay of more than one year after its publication in the Gazette, that too, on being pointed out to the concerned Ministry of Agriculture (Department of Agriculture and Cooperation). The Committee observe that neither any explanatory note giving the reasons for such delay was appended to the Orders when so laid as per the recommendation of the Committee nor any reply furnished by the Ministry in this regard. The Committee take a serious note of the casual attitude of the Ministry towards the Committee's recommendation on such an important Parliamentary obligation of laying of 'Orders', which are under their administrative control. The Committee, therefore, desire that the Ministry may justify their inordinate delay in laying of such rules and furnish their reasons of non-appending of the delay statement thereof at the time of laying. The Committee also desire that the Ministry to intimate them about the necessary steps taken by them to avoid recurrence of such lapses in future.</p>

2.	<p data-bbox="451 401 492 432">2.4</p> <p data-bbox="451 1178 492 1209">2.5</p>	<p data-bbox="667 191 1521 352"><b>Delay in Publication of the Ministry of Agriculture, Central Institute of Fisheries, Nautical and Engineering Training Cochin, Director Recruitment Rules, 2010 (GSR 847-E of 2010).</b></p> <p data-bbox="667 401 1521 1136"><b>The Committee note that the Ministry of Agriculture, Central Institute of Fisheries, Nautical and Engineering Training Cochin, Director Recruitment Rules, 2010 (GSR 847-E of 2010) which ought to have been notified in the Extraordinary Gazette on the same day, were sent for publication on 5 October, 2010 and finally published on 20 October, 2010, causing a delay of 15 days. The Committee observe that the Ministry simply cited the reason that initially the Rules were sent to the press for publication in the Gazette of India, Part-II, Section 3(i) and later when it was felt that the published copy was required urgently, it was decided to get them published in the Extraordinary Gazette entailing a delay of 15 days. The Committee strongly deplore the Ministry's casual approach and lack of planning in matters of publication of statutory orders, that too pertaining to the recruitment of a senior level post of a Director resulting in the delay, which could have been avoided had the Ministry taken their responsibility a bit more seriously.</b></p> <p data-bbox="667 1199 1521 1608"><b>The Committee further observe that it is also the Ministry's responsibility to ensure that the matters contained in the Rules which are certified to be fit for publication in the Extraordinary Gazette are of urgent nature and having certified as such, it should be ensured that these rules are published on the same day. The Committee, therefore, desire the Ministry to apprise them about the reasons that caused delay and also about the measures adopted by them to establish a mechanism to ensure avoidance of recurrence of such lapses in future.</b></p>
3	3.7	<p data-bbox="667 1648 1521 1734"><b>Infirmities in the Vegetable Oil Products Production And Availability (Regulation) Order, 2011 (GSR 664-E Of 2011).</b></p> <p data-bbox="667 1776 1521 1892"><b>The Committee note that Regulation 6 of the Vegetable Oil Products Production and Availability (Regulation) Order, 2011 (GSR 664-E of 2011) of the notification issued by the</b></p>

		<p>Ministry of Consumer Affairs, Food &amp; Public Distribution (Department of Food &amp; Public Distribution) (Directorate of Vanaspati, Vegetable Oils and Fats) provides for appeal by the aggrieved person against the order of fine or cancellation of registration. The Regulation, however, does not stipulate any time limit for disposal of the appeal by the appellate authority. On being pointed out, the Ministry of Consumer Affairs, Food &amp; Public Distribution (Department of Food &amp; Public Distribution) have proposed to amend the said order so as to specify a period of 90 days from the date of filing of the appeal for disposal of appeals by the Appellant Authority. The Committee, therefore, recommend that the Ministry should exercise utmost care while drafting rules/regulations in future. The Committee also urge the Ministry to bring out the amendment at the earliest.</p>
	3.8	<p>As per Regulation 7 of the order, the Central Government may, in public interest, relax in 'specific circumstances' for 'specific period' any or all of the requirements specified in this Order for such manufacturer, stocking or sale of any variety of vegetable oil products. The Committee note that the Regulation has not indicated the circumstances in which this power can be exercised by the authorities and the maximum duration for which the relaxation can be applied. The Ministry of Consumer Affairs, Food &amp; Public Distribution (Department of Food &amp; Public Distribution) have clarified that 'specific circumstances' may include shortage of edible oil in the country, necessity of import of edible oil, management of scheme for distribution of subsidized imported edible oils, augment the availability of edible oil etc. to meet domestic demand. The Committee urge the Ministry of Consumer Affairs, Food &amp; Public Distribution (Department of Food &amp; Public Distribution) (Directorate of Vanaspati, Vegetable Oils and Fats) to incorporate this clarification in the regulation. The regulation should also indicate the maximum duration not exceeding six months for which the relaxation can be applied. The Committee further recommend that the requisite amendment to the order be carried out at the earliest and the Committee be apprised of the action taken in this regard.</p>



## APPENDIX II

**(Vide Para 5 of the Introduction of the Report)**

**EXTRACTS FROM MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON  
SUBORDINATE LEGISLATION (2014-2015)**

The second sitting of the Committee (2014-15) was held on Monday, the 3<sup>rd</sup> November, 2014 from 1500 to 1545 hours in Committee Room No. 53, Parliament House, New Delhi.

**PRESENT**

1. Shri Dilipkumar Mansukhlal Gandhi Chairperson

## MEMBERS

2. Shri Idris Ali
3. Shri Shyama Charan Gupta
4. Shri S. P. Muddahanumegowda
5. Adv. Narendra Keshav Sawaikar
6. Shri Ram Kumar Sharma
7. Shri Jayant Sinha
8. Shri Nandi Yellaiah

**SECRETARIAT**

1. Shri R.S. Kambo - Joint Secretary
2. Smt. Jagriti Tewatia - Deputy Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee (2014-15). The Committee, thereafter, considered the following Memoranda:-

- (i) **Memorandum No. 2** – The Protection of Plant Varieties and Farmers' Rights (Second Amendment) Rules, 2009 (GSR 783-E).
- (ii) **Memorandum No. 3** – The Ministry of Agriculture, Central Institute of Fisheries, Nautical and Engineering Training Cochin, Director Recruitment Rules, 2010 (GSR 847-E).
- (iii) **Memorandum No. 4** – The Vegetable Oil Products Production and Availability (Regulation) Order, 2011 (GSR 664-E).

3. After deliberations, the Committee decided to incorporate the points raised in the Memoranda Nos. 2 to 4 in their Report to be formulated after appropriately incorporation minor amendments.

4.     xx     xx     xx     xx

The Committee then adjourned.

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**\*\*Omitted portion of the Minutes are not relevant to this Report**

## MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2014-2015)

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The third sitting of the Committee (2014-15) was held on Thursday, the 18<sup>th</sup> December, 2014 from 1500 to 1545 hours in Chairperson's Chamber, Room No. 146, Parliament House, New Delhi.

### **PRESENT**

1. Shri Dilipkumar Mansukhlal Gandhi                      Chairperson

### **MEMBERS**

2. Shri Idris Ali
3. Shri P. P. Chaudhary
4. Shri Shyama Charan Gupta
5. Shri Jhina Hikaka
6. Shri S. P. Muddahanumegowda
7. Shri Chandu Lal Sahu
8. Shri Ram Prasad Sarmah
9. Adv. Narendra Keshav Sawaikar
10. Shri Ram Kumar Sharma

### **SECRETARIAT**

1. Shri R.S. Kambo                      -              Joint Secretary
2. Shri Raju Srivastava                -              Additional Director

2. At the outset, the Chairperson welcomed the members to the sitting of the Committee (2014-15).

3. The Committee, then, considered and adopted the draft 'First Action Taken Report' and 'Second Report' of the Committee without any modification. The Committee also authorized the Chairperson to present the reports to the House.

The Committee then adjourned.