# COMMITTEE ON SUBORDINATE LEGISLATION (2014-2015)

# (SIXTEENTH LOK SABHA)

# SIXTH REPORT

# (PRESENTED TO LOK SABHA ON 12.8.2015)

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LOK SABHA SECRETARIAT NEW DELHI AUGUST, 2015 / SRAVANA, 1937 (Saka) COSL No.

PRICE: Rs.

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and printed by the Manager, Government of India Press, Minto Road, New Delhi.

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### <u>COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION</u> (2014-2015)

- 1. Shri Dilipkumar Mansukhlal Gandhi Chairperson
- 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. Shri Birendra Kumar Chaudhary

### **SECRETARIAT**

Shri Shiv Singh - Joint Secretary
 Shri Ajay Kumar Garg - Director
 Smt. Jagriti Tewatia - Deputy Secretary

(iii)

### INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sittings held on 9.3.2015.

3. The Committee considered and adopted this Report at their sitting held on 4.8.2015.

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 Sixth sitting of the Committee (2014-15) held on 9.3.2015 and Thirteenth Sitting of the Committee (2014-15) held on 4.8.2015 relevant to this Report are included in Appendix-II of the Report.

New Delhi; <u>4 August, 2015</u> 13 Sravana, 1937 (Saka) DILIPKUMAR MANSUKHLAL GANDHI Chairperson, Committee on Subordinate Legislation

#### REPORT

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# Infirmities in the Department of Posts Multi Tasking Staff Recruitment (Amendment) Rules, 2012 (GSR 512-E of 2012).

The Ministry of Communications & Information Technology (Department of Posts) published the Department of Posts Multi Tasking Staff Recruitment (Amendment) Rules, 2012 (GSR 512-E of 2012) in Gazette of India, Extraordinary, Part-II, Section 3(i) dated 28.06.2012. On scrutiny, it was observed that the foot-note to indicate the particulars of the Principal Rules and the subsequent amendments made thereto have not been appended to facilitate easy referencing.

1.2 The Ministry of Communications & Information Technology (Department of Posts) vide this Secretariat's OM dated 28.01.2013 were requested to furnish their comments on the aforesaid observation.

1.3 The Ministry of Communications & Information Technology (Department of Posts) vide their OM dated 06.03.2013 *inter-alia* stated as under:-

"the observations made by the Committee on Subordinate Legislation have been noted for compliance. Necessary amendment to the said RRs of Multi Tasking Staff is being done in consultation with the Ministry of Law & Justice."

1.4 The Ministry of Communications & Information Technology (Department of Posts), vide their subsequent OM dated 17.4.2013 submitted as under:-

"for making the necessary amendment to incorporate the foot-note the relevant file has already been referred to the Ministry of Law & Justice for vetting on 8.4.2013 and a copy of the same will be sent to the Lok Sabha Secretariat soon after the same is notified in the Gazette of India."

1.5 However, the Ministry of Communications & Information Technology (Department of Posts), was reminded vide this Secretariat's OM dated 26.8.2013 to furnish the copy of the said

amendment notified in the Gazette of India alongwith the reason for the delay caused in the matter. In response, the Ministry of Communications & Information Technology (Department of Posts) vide their OM dated 24.09.2013 furnished a copy of the requisite Gazette Notification. Further, elucidating the reasons for the delay caused in the matter, the Ministry submitted as follows:-

"In so far delay is concerned, the file was sent to Department of Legislative Affairs, Ministry of Law for vetting on 08.04.2013, which was received back in the Department of Posts on 15.05.2013. On 31.05.2013, at the time of delivery by hand, the concerned authorities in Mayapuri Press, New Delhi did not accept the draft notification stating that now they accept only the hard copy along with soft copy having Hindi version in Chanakya or Kruti-Dev font.

Accordingly, the draft notification in the requisite font of Kruti Dev was finalized by Office Language Division of the Department after arranging the necessary Software. The finalized draft was received in this Division on 25.07.2013. The said notification was again sent to Mayapuri Press on 05.08.2013 and the same has now been notified in the Gazette of India on 12.08.2013."

1.6 The reason given by the Ministry is untenable because the requisite font of 'Kruti Dev' is readily available on internet, free of cost for which the concerned Division in the Ministry took almost two months time, thereby, resulting in delay in publication of amendment in the Gazette of India which, otherwise was avoidable. Further, as per Government of India's mandate all Gazette notifications are published in both Hindi & English versions. Moreover, it was not the first notification of the Ministry of Communications & Information Technology (Department of Posts) which was to be notified by them. The Ministry, therefore, should have been cautious about the basic requirements of the press.

1.7 The Committee observe that in Department of Posts Multi Tasking Staff Recruitment (Amendment) Rules, 2012 (GSR 512-E of 2012) notified by the Ministry of Communications & Information Technology (Department of Posts), footnote indicating the particulars of the Principal Rule and the subsequent amendments made thereto to facilitate easy referencing was not appended. The Committee observe that only when it was pointed out by the Committee, the Ministry took note of the observation made by the Committee for compliance and the Ministry vide its OM dated 06.03.2013 informed that necessary amendment to the Recruitment Rules of Department of Posts Multi Tasking Staff is being carried out in consultation with the Ministry of Law & Justice.

1.8 The Committee further note that the notification for amendment was published on 12 August 2013 in the Gazette of India by the Ministry i.e. after a delay of 6 months, since the Committee took cognizance of the matter and of 5 months after the Ministry gave its assurance that necessary amendment to the Recruitment Rules is being carried out. The reason advanced by the Ministry for such delay was, due to non-acceptance of the draft notification by the Mayapuri Press, New Delhi on the grounds that they accept only hard copy along with soft copy having Hindi version in 'Chanakya' or 'Kruti Dev' font. The Committee observe that the desired font i.e. 'Kruti Dev' is available free of cost on Internet. Moreover, as per the prescribed procedure followed by Government of India, all Gazette Notifications are published both in Hindi and English versions and also this was not the first notification to be notified by the Ministry of Communications & Information Technology (Department of Posts). The Committee, therefore, recommend that the Ministry of Communications & Information Technology (Department of Posts) should be more cautious henceforth while publishing amendment notifications so as to keep a check on such avoidable delays and should try to publish amendments in the Gazette of India within a period of two months after the Ministry has been apprised of the amendment.

# The Prevention of Money-laundering (Maintenance of Records) Amendment Rules, 2013 (GSR 576-E of 2013).

The Prevention of Money Laundering (Maintenance of Records) Rules, 2005 were amended by the aforesaid amendment rules published vide GSR 576-E in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 27.8.2013. The aforesaid amendment *inter-alia* substitutes Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005. However, in the Amendment Rules, a proviso was also added which is as under:-

"Provided that where the Regulator is of the view that money laundering and terrorist financing risks as effectively managed and where this is essential not to interrupt the normal conduct of business, the Regulator may permit the reporting entity to complete the verification as soon as reasonably practicable following the establishment of the relationship.....".

2.2 On examination of the GSR under reference (GSR 576 E of 2013), it had been observed that the usage of word "reasonably practicable" did not specify any time limit within which the reporting entity would complete the requisite verification. As a matter of fact, while formulating the Rules or undertaking amendment to the Rules, such vague expressions should be avoided so that Rules are made precise and specific and the scope of varied interpretation becomes minimal. The subjective discretionary powers of deciding authorities often retard the objectives of amendment of Rules. The Ministry of Finance (Department of Revenue) were accordingly requested to furnish their comments.

2.3 The Ministry of Finance (Department of Revenue) <u>vide</u> their OM dated 22 May, 2014 have furnished the following reply:-

"The proviso has been inserted to give effect to Recommendation 10 of the Financial Action Task Force (FATF) which is mandatory for all countries. The relevant portion of Recommendation 10 is quoted below:-

Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business".

The above provision was incorporated in the PML Rules in exactly the same words as used in the Recommendation in order to ensure that the FATF evaluation does not pronounce the Rules as deficient. The matter is under discussion with the Regulator to prescribe appropriate time periods for the sectors regulated by them".

2.4 The use of words 'reasonably practicable' in rule 9 (1) (a) (ii) of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 was not only vague but also unspecific and, therefore, liable to be interpreted differently by different persons. In this regard, the Ministry of Finance (Department of Revenue) have stated that the said expression was part of the recommendation of the Financial Task Force (FATF) which is mandatory for all countries and same wordings of recommendation were used in order to ensure that rules are not pronounced deficient in the FATF evaluation. Further, the Ministry have also added that discussion are underway with regulators to prescribe appropriate time periods for the sectors regulated by them. The expression 'reasonably practicable' gives the reporting entity the leverage to take their own time in completing the verification after establishment of relationship between the client and the beneficial owner.

2.5 The Committee note that the expression 'reasonably practicable' used in the Prevention of Money-laundering (Maintenance of Records) (Amendment) Rules, 2013 is vague and is contrary to the oft-repeated recommendation of the Committee that use of vague expressions which are likely to be interpreted variedly should be avoided in the rules. The Ministry in their reply have stated that the expression was part of the recommendation of the Financial Action Task Force (FATF), which is mandatory for all countries and same wordings of recommendation were used in order to ensure that rules are not pronounced deficient in the FATF evaluation. However, the Committee observe that the Ministry in their reply itself have stated that they are in discussions with various regulators for setting up a time limit which justifies gravity and relevance of the issues raised by Committee. The Committee, therefore, take the view that in order to give effect to recommendation 10 of the FATF, the Ministry could have captured the

essence of the recommendation of the FATF and could have done away with such vague expression in the rules. The Committee also take note of the fact that since the issue is related to money laundering and terrorist funding, therefore, it is directly linked to economy as well as internal security of the country. The Committee recommend that the Ministry of Finance (Department of Revenue) may make the rules precise and specific by setting a time limit for the reporting entity to complete the verification by replacing the vague expression viz. 'reasonably practicable' in the proviso added to Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

#### The Legal Metrology (Government Approved Test Centre) Rules, 2013 (GSR 593-E of 2013).

The Legal Metrology (Government Approved Test Centre) Rules, 2013 (GSR 593-E of 2013) were published in Gazette of India, Extraordinary in Part II Section 3, Sub Section (i) dated 5 September, 2013 On scrutiny of the Rules, following infirmities were observed:-

- (i) The word 'willingness' in rule 5(3) (e) and the word 'willing' in rule 5 (3) (f) were vague and non-specific which carried the risk of Government Approved Test Centre to have the liberty of getting equipment verified by an agency of their choice and train its employees as per their willingness.
- (ii) Rule 5(3) h is not self explanatory and explicit because it does not eloquently elaborate the conditions that are required to be considered by the Director, Legal Metrology before making a recommendation to set up a Government Approved Test Centre.
- (iii) The words 'shall be final' in rule 5(8) give an impression that jurisdiction of courts of law was being ousted.

The Ministry of Consumer Affairs, Food and Public Distribution, (Department of Consumer Affairs) were requested to furnish their comments on the above issues.

3.2 The Ministry <u>vide</u> their OM dated 14 July, 2014 accepted the changes suggested by this Secretariat and has stated that necessary amendments will be done in consultation with Ministry of Law. The proposed changes have been elucidated in succeeding paragraphs.

3.3 Rule 5 (3) of the Legal Metrology (Government Approved Test Centre) Rules, 2013 (GSR 593-E of 2013) is given below:

"While making recommendation for approval of a Government Approved Test Centre, the Director, Legal Metrology shall consider the following:-

(a) availability and accessibility of land and building;

(b) adequacy of measuring equipment, testing facilities and other infrastructure;

(c) availability of technically qualified man power;

(d) capacity for efficient and timely service to customers;

(e) willingness to get equipment periodically verified by secondary standard

laboratory or any other agency determinable by Director, Legal Metrology;

(f) willing to train its employees in institutions nominated by Director Legal

Metrology;

(g) any other factor, which in the opinion of Director, Legal Metrology will affect proper functioning of Government Approved Test Centre;

(h) conditions to set up;

(i) Qualifications.- The qualification of the principal officer or any of the employee of the Government Approved Test Centre shall be equivalent to the qualification as specified in the Legal Metrology (General Rules),2011 for a Legal Metrology Officer;

(j) Experience.-The principal officer or any of the employees of the Government Approved Test Centre shall have working experience of at least three years in the field of legal metrology."

3.4 In Rules 5 (3) (e) and (f), the use of words 'willingness' and 'willing' respectively are vague and lacked clarity carrying the possibility of varied interpretation. Further, Rule 5 (3) (h) is not specific because it does not elaborate the conditions that are required to be considered by Director, Legal Metrology before making a recommendation for setting up of Government Approved Centre (GAC). The Committee have time and again recommended that it is of utmost significance that the provision of legislation (including subordinate legislation) are spelt out with precision and , as far as possible , the use of vague expressions, which may be interpreted differently by different persons, should be avoided.

3.5. The Committee note that the words 'willingness' and 'willing' used in rules 5 (3) (e) (f) respectively are vague and rule 5 (3) (h) lacks clarity in itself. The Committee observe that the use of vague expressions and the lack of clarity in the rules tend to

erode the efficacy of the rules. The Committee strongly view that use of such expressions render the particular provision of the rules and, at times, the entire rules bafflingly intricate an instrument of exercising vagariously wide power by the executive authority. The Committee note that on being pointed out, the Ministry have agreed to amend the rules to do away with the vague expressions in the rules. The Committee, therefore, desire that the Ministry should bring out amendment to the rules so that vague expressions used in the rules, which may be interpreted differently by different persons are avoided. The Committee, accor dingly, recommend that the Ministry should re-phrase the terms which lack clarity.

3.6 Rule 5(8) of the Legal Metrology (Government Approved Test Centre) Rules, 2013 states that if any person is aggrieved by orders of Director of Legal Metrology regarding rejection of application for GAC due to non-fulfilling of eligibility conditions, then the person may appeal to Secretary of the Department of Consumer Affairs whose decision thereon shall be final. The words 'shall be final' gives an impression that the jurisdiction of the courts of law is being ousted. The Committee have often recommended that the language used in the rules should not give an impression that jurisdiction of courts of law is being ousted.

3.7 The Committee note that words 'shall be final' used in rule 5(8) of the aforesaid rules gives an impression that the jurisdiction of the courts of law is being ousted. The Committee take the view that expressions which tend to give an impression to general public that the jurisdiction of courts of law is being ousted should not form part of the rules. The Committee note with satisfaction that on being pointed out, the Ministry have agreed to amend the rules to the desired effect. The Committee recommend that Ministry may suitably amend the rules to exclude the expression which tend to reflect that jurisdiction of courts is being ousted.

DILIPKUMAR MANSUKHLAL GANDHI Chairperson, Committee on Subordinate Legislation

New Delhi; <u>4 August, 2015</u> 13 Sravana, 1937 (Saka)

# **APPENDIX I**

# (Vide Para 4 of the Introduction of the Report)

### SUMMARY OF RECOMMENDTIONS MADE IN THE SIXTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

# (SIXTEENTH LOK SABHA)

SI.No.	Reference to Para No. in the Report	Summary of Recommendations
1	2	3
1.		Infirmities in the Department of Posts Multi Tasking Staff Recruitment (Amendment) Rules, 2012 (GSR 512-E of 2012).
	1.7	The Committee observe that in Department of Posts Multi Tasking Staff Recruitment (Amendment) Rules, 2012 (GSR 512-E of 2012) notified by the Ministry of Communications & Information Technology (Department of Posts), footnote indicating the particulars of the Principal Rule and the subsequent amendments made thereto to facilitate easy referencing was not appended. The Committee observe that only when it was pointed out by the Committee, the Ministry took note of the observation made by the Committee for compliance and the Ministry vide its OM dated 06.03.2013 informed that necessary amendment to the Recruitment Rules of Department of Posts Multi Tasking Staff is being carried out in consultation with the Ministry of Law & Justice.
	1.8	The Committee further note that the notification for amendment was published on 12 August 2013 in the Gazette of India by the Ministry i.e. after a delay of 6 months, since the Committee took cognizance of the matter and of 5 months after the Ministry gave its assurance that necessary amendment to the Recruitment Rules is being carried out. The reason advanced by the Ministry for such delay was, due to non-acceptance of the draft notification by the Mayapuri Press, New Delhi on the grounds that they accept only hard copy along with soft copy having Hindi version in 'Chanakya' or 'Kruti Dev' font. The Committee observe that the desired font i.e. 'Kruti Dev' is available free of cost on Internet. Moreover, as per the prescribed procedure followed by

		Government of India, all Gazette Notifications are published both in Hindi and English versions and also this was not the first notification to be notified by the Ministry of Communications & Information Technology (Department of Posts). The Committee, therefore, recommend that the Ministry of Communications & Information Technology (Department of Posts) should be more cautious henceforth while publishing amendment notifications so as to keep a check on such avoidable delays and should try to publish amendments in the Gazette of India within a period of two months after the Ministry has been apprised of the amendment.
2.		The Prevention of Money-laundering (Maintenance of Records) Amendment Rules, 2013 (GSR 576-E of 2013).
	2.5	The Committee note that the expression 'reasonably practicable' used in the Prevention of Money-laundering (Maintenance of Records) (Amendment) Rules, 2013 is vague and is contrary to the oft-repeated recommendation of the Committee that use of vague expressions which are likely to be interpreted variedly should be avoided in the rules. The Ministry in their reply have stated that the expression was part of the recommendation of the Financial Action Task Force (FATF), which is mandatory for all countries and same wordings of recommendation were used in order to ensure that rules are not pronounced deficient in the FATF evaluation. However, the Committee observe that the Ministry in their reply itself have stated that they are in discussions with various regulators for setting up a time limit which justifies gravity and relevance of the issues raised by Committee. The Committee, therefore, take the view that in order to give effect to recommendation 10 of the FATF, the Ministry could have captured the essence of the recommendation of the FATF and could have done away with such vague expression in the rules. The Committee also take note of the fact that since the issue is related to money laundering and terrorist funding, therefore, it is directly linked to economy as well as internal security of the country. The Committee recommend that the Ministry of Finance (Department of Revenue) may make the rules precise and specific by setting a time limit for the reporting entity to complete the verification by replacing the vague expression

3.		viz. 'reasonably practicable' in the proviso added to Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005. The Legal Metrology (Government Approved Test Centre) Rules, 2013 (GSR 593-E of 2013).
	3.5	The Committee note that the words 'willingness' and 'willing' used in rules 5 (3) (e) (f) respectively are vague and rule 5 (3) (h) lacks clarity in itself. The Committee observe that the use of vague expressions and the lack of clarity in the rules tend to erode the efficacy of the rules. The Committee strongly view that use of such expressions render the particular provision of the rules and, at times, the entire rules bafflingly intricate an instrument of exercising vagariously wide power by the executive authority. The Committee note that on being pointed out, the Ministry have agreed to amend the rules to do away with the vague expressions in the rules. The Committee, therefore, desire that the Ministry should bring out amendment to the rules so that vague expressions used in the rules, which may be interpreted differently by different persons are avoided. The Committee, accordingly, recommend that the Ministry should re-phrase the terms which lack clarity.
	3.7	The Committee note that words 'shall be final' used in rule 5(8) of the aforesaid rules gives an impression that the jurisdiction of the courts of law is being ousted. The Committee take the view that expressions which tend to give an impression to general public that the jurisdiction of courts of law is being ousted should not form part of the rules. The Committee note with satisfaction that on being pointed out, the Ministry have agreed to amend the rules to the desired effect. The Committee recommend that Ministry may suitably amend the rules to exclude the expression which tend to reflect that jurisdiction of courts is being ousted.

#### APPENDIX II

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

# EXTRACTS FROM MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2014-2015)

The sixth sitting of the Committee (2014-15) was held on Monday, the 9<sup>th</sup> March, 2015 from 1500 to 1545 hours in Committee Room 'E', Parliament House Annexe, New Delhi.

### PRESENT

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 S. P. Muddahanumegowda
- 7. Shri Prem Das Rai
- 8. Adv. Narendra Keshav Sawaikar
- 9. Shri Ram Kumar Sharma
- 10. Shri Nandi Yellaiah
- 11. Shri Birendra Kumar Chaudhary

#### **SECRETARIAT**

- 1. Shri Shiv Singh Joint Secretary
- 2. Shri Ajay Kumar Garg -
  - Director
    Additional Director
- Shri Raju Srivastava
  Smt. Jagriti Tewatia
- Deputy Secretary

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

3. XX XX XX XX

- 4. The Committee, thereafter, considered following Memoranda:-
  - (i) **Memorandum No. 8** Infirmities in the Department of Posts Multi Tasking Staff Recruitment (Amendment) Rules, 2012 (GSR 512-E).
  - (ii) **Memorandum No. 9** The Prevention of Money-laundering (Maintenance of Records) Amendment Rules, 2013 (GSR 576-E).
  - (iii) **Memorandum No. 10 –** The Legal Metrology (Government Approved Test Centre) Rules, 2013 (GSR 593-E).

5. After deliberations, the Committee decided to incorporate the points raised in the Memoranda

Nos. 8 to 10 in their Report to be formulated in this regard.

6.	XX	XX	XX	XX

7. XX XX XX XX

The Committee then adjourned.

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

# EXTRACTS FROM MINUTES OF THE THIRTEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2014-2015)

The Thirteenth sitting of the Committee (2014-15) was held on Tuesday, the 4<sup>th</sup> August, 2015 from 1500 to 1630 hours in Committee Room No. 62, Parliament House, New Delhi.

#### PRESENT

1. Shri Dilipkumar Mansukhlal Gandhi <u>Chairperson</u>

#### MEMBERS

- 2. Shri C.R. Chaudhary
- 3. Shri P.P. Chaudhary
- 4. Shri Jhina Hikaka

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- 5. Shri Chandulal Sahu
- 6. Shri Ram Prasad Sarmah
- 7. Adv. Narendra Keshav Sawaikar
- 8. Shri Birendra Kumar Chaudhary

#### **SECRETARIAT**

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- Shri Ajay Kumar Garg Director
  Smt. Jagriti Tewatia Deputy Secretary

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4.	XX	XX	XX	XX
5.	XX	XX	XX	XX

6.	XX	XX	XX	XX

7. The Committee, thereafter, considered and adopted the draft 'Sixth, Seventh, Eighth and Ninth Reports' of the Committee without any modification. The Committee also authorised the Chairperson to present these reports to the House.

8. XX XX XX XX XX

The Committee then adjourned.