

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

DIRECTORATE OF ENFORCEMENT

**ESTIMATES COMMITTEE
1993-94**

TENTH LOK SABHA



सत्यमेव जयते

**LOK SABHA SECRETARIAT
NEW DELHI**

THIRTY-THIRD REPORT ESTIMATES COMMITTEE (1993-94)

(TENTH LOK SABHA)

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

DIRECTORATE OF ENFORCEMENT

**Action Taken by Government on the recommendations
contained in the Sixth Report of Estimates
Committee (Tenth Lok Sabha)**



Presented to Lok Sabha on 23rd August, 1993

**LOK SABHA SECRETARIAT
NEW DELHI**

August, 1993/Sravana, 1915(S)

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Corrigenda to 33rd Report of Estimates
Committee (10th Lok Sabha) on Directorate
of Enforcement.

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COMPOSITION OF THE ESTIMATES COMMITTEE
(1993-94)

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2. Shri K. K. Sharma — *Joint Secretary*
3. Shri K. L. Anand — *Under Secretary*
4. Shri R. C. Kakkar — *Committee Officer*

INTRODUCTION

1. the Chairman of Estimates Committee having been authorised by the Committee to submit the Report, on their behalf, present this 33rd Report on Action Taken by Government on the recommendations contained in the Sixth Report of the Estimates Committee (Tenth Lok Sabha) on the Ministry of Finance (Department of Revenue)—Directorate of Enforcement.

2. The Sixth Report was presented to Lok Sabha on 6th March, 1992. Government furnished their replies indicating action taken on the recommendations contained in that Report on 24th March, 1993 and on 7th June, 1993. The Draft Report was considered and adopted by the Committee on 16th August, 1993.

3. The Report has been divided into following Chapters:—

- (i) Report
- (ii) Recommendations/Observations which have been accepted by Government.
- (iii) Recommendations/Observations which the Committee do not desire to pursue in view of Government's replies.
- (iv) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee.
- (v) Recommendations/Observations in respect of which final replies of Government are still awaited.

4. An analysis of action taken by Government on the recommendations contained in the Sixth Report of Estimates Committee (Tenth Lok Sabha) is given in Appendix. It would be observed that out of 35 recommendations made in the Report 19 recommendations *i.e.* 54.2% have been accepted by Government. The Committee do not desire to pursue 8 recommendations *i.e.* 22.9% in view of the Government replies. Replies of Government in respect of 8 recommendations *i.e.* about 22.9% have not been accepted by the Committee.

5. For facility of reference and convenience, the Conclusions and Recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;
August 19, 1993

Sravana 28, 1915 (S)

DR. KRUPASINDHU BHOI,
Chairman,
Estimates Committee.

CHAPTER I

REPORT

1.1 This Report of the Estimates Committee deals with action taken by Government on the recommendations contained in their Sixth Report (Tenth Lok Sabha)—Ministry of Finance (Department of Revenue)—Directorate of Enforcement which was presented to Lok Sabha on 6th March, 1992.

1.2 Action Taken notes have been received in respect of all the 35 recommendations contained in the Report.

1.3 Action taken notes on the recommendations of the Committee have been categorised as follows:—

- (i) Recommendations/Observations which have been accepted by the Government.

4, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33 (Total 19 Chapter II)

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of the Government replies:

1, 2, 7, 8, 9, 10, 11, 25 (Total 8 Chapter III)

- (iii) Recommendations/Observations in respect of which Government's replies have not been accepted by the Committee:

3, 5, 6, 14, 23, 24, 34, 35 (Total 8 Chapter IV)

- (iv) Recommendations/Observations in respect of which final replies are still awaited:

NIL (Chapter V)

1.4 The Committee will now deal with action taken by Government on some of the recommendations.

Powers of Officers of the Directorate (Sl. No. 3, Para 1.25)

1.5 The Committee were distressed to find that there had been cases of misuse of powers by the Officers of the Directorate of Enforcement. They were, informed that efforts had been made to prevent such abuse of powers.

1.6 The Committee had, therefore, desired that suitable steps should be taken expeditiously, by the Ministry to ensure that the powers vested in various officers of Directorate were not misused and cases of misuse dealt with expeditiously and sternly. They liked to be informed about the steps taken in that regard.

1.7 The Ministry in their action taken reply has stated that keeping in view the observations of the Committee, it has been decided to suitably raise the levels at which various powers available to the officers of the Directorate will hereafter be exercised, which is expected to reduce the scope for abuse of power and element of arbitrariness. Appropriate notifications incorporating these changes are being finalised and will be issued shortly.

1.8 The Committee are concerned to note that even after a lapse of more than one year the Ministry could not finalise the draft notification incorporating necessary changes in the powers of the officers of the Directorate. The Committee are of the view that the matter had not been given the requisite attention that it deserved and has been allowed to linger on for such a long period. The Ministry should have given utmost priority to this important issue. The Committee desire that at least now the appropriate notification incorporating necessary changes in the powers of the officers should be finalised and issued at the earliest. They would like to be apprised of the action taken in this regard and changes made in the powers of the officers of the Directorate within a period of three months.

Review of functioning of Directorate of Enforcement

(Sl. Nos. 5 & 6 paras 1.27 & 1.28)

1.9 The Committee were surprised to note that no review or evaluation of the functioning of the Directorate had been made by any agency, internally or externally.

1.10 The Committee, had suggested that the Government should consider the -desirability of providing for periodic evaluation of the Directorate, say, after every 5 years in the FERA itself. Such an evaluation would then have the force of law and all the necessary but sensitive information could be revealed to a panel of evaluators who could be drawn from amongst the retired and serving officers of the Government possessing actual experience of having worked in various economic intelligence/enforcement agencies.

1.11 In the action taken reply the Ministry has stated that with the recent far-reaching changes in the Foreign Exchange Regulation Act and the Government decision announced by the Finance Minister while introducing the Union Budget 1993-94 regarding full convertibility of the Indian rupee on trade discount, the role of the Directorate of Enforcement will shrink & undergo a substantial change. Moreover, it will not be practical to provide for and take up periodical evaluation, without disclosing sensitive information and exposing the informers and investigators to risks.

1.12 The Committee who were fully aware of the risk involved in the disclosure of sensitive information to the evaluators had recommended for the formation of a panel of evaluators for periodic evaluation of the Directorate from amongst the retired and serving officers of the Government possessing actual experience of having worked in various economic

intelligence/enforcement agencies. Keeping in view the changes made in FERA, it is all the more necessary to evaluate the role of Directorate of Enforcement.

1.13 The Committee, therefore cannot but conclude that the Government has tried to evade the issue by taking shelter behind the plea of disclosing sensitive information. They, therefore, reiterate their earlier recommendation and desire the Ministry to re-examine its stand with an open mind and undertake the periodic review of the activities of the Directorate. The Committee would like to be apprised of the decision taken within a period of Three months.

Collection of Intelligence

(Sl. No. 14 Para 3.32)

1.14 The Committee were informed that though RBI was the custodian of foreign exchange, their experience had been very disappointing in the matter of monitoring of export proceeds in the matter and there was an urgent need for strengthening the reporting system in the RBI. The Committee had desired the Government to take necessary corrective measures in the matter urgently.

1.15 The Ministry in their Action Taken reply has furnished the following statistics that would give the total exports and outstanding export bills during 1990 and 1991:

Outstanding as on	Total exports (in crores)	Outstanding export bills (in crores)	Percentage of 3 to 2
March 1990	27681 (April 1989—March 1990)	966.07	3.49
Sept. 1990	30358 (October 1989—Sept. 1990)	1159.51	3.82
March 1991	35527	1349.12	3.80
Sept. 1991	35024 (Sept. 1990—Aug. 1991 Prov).	1610.80	4.60

1.16 The aggregate outstandings included an amount of Rs. 158 crores in respect of exports to countries facing externalisation difficulties.

1.17 It would be seen from the above table that while there has been a gradual increase in the amount of outstanding export bills as well as total exports of the country, the percentage of outstanding export bills to aggregate exports has continued to remain within a limit of 5%

Notwithstanding, this RBI continues to maintain vigorous follow up with various banks, which is ongoing in nature, in order to ensure that the export outstandings are kept to the minimum.

1.18 The Committee are concerned to note that the Ministry has cleverly evaded the recommendation regarding monitoring of export proceeds and has merely furnished the statistical data on the total exports and the outstanding export bills without highlighting the measures taken to monitoring the export proceeds and to strengthen the reporting systems in the RBI. The Committee had recommended that the RBI being the custodian of foreign exchange should make improvements in the matter of monitoring of export proceeds. While reiterating their earlier recommendation the Committee desire the Ministry to take concrete steps expeditiously for bringing improvement in monitoring of export proceeds and strengthening the reporting system in the RBI. The Committee would like to be apprised of corrective measures taken in the matter within a period of six months.

Disposal of Cases

(Sl. Nos. 21, 22, Paras 3.78 & 3.79)

1.19 The Committee regretted to find that as on 31st December, 1989, 1268 appeals were pending before the FERA Board and that some of these appeals pertained to the year 1977. They were further dismayed to note that the percentage of disposal of the appeals during 1987, 1988 and 1989 had been as low as 35%, 31% and 27% respectively.

1.20 The Committee has desired the Ministry to take immediate steps so that the backlog of appeals could be cleared expeditiously.

1.21 The Ministry in its action taken reply has stated that in order to facilitate quicker disposal by FERA Appellate Board, Section 52(6) of the FERA has been amended enhancing the jurisdiction of a single member of the Board from the existing limit of penalty of Rs. 50,000/- to Rs. 2.5 lakhs for deciding a case.

1.22 The Committee appreciate that in order to facilitate quicker disposal of the cases Section 52(6) of the FERA has been amended enhancing the jurisdiction of single member of the Board from the existing limit of penalty of Rs. 50,000/- to Rs. 2.5 lakh for deciding a case. The Committee hope that with this amendment FERA Board will be able to dispose of appeals within a reasonable time limit and not allow to pile up the appeals. The Committee expect that the disposal of backlog of appeals would receive that urgent consideration that is recognised both by the Ministry and emphasized by the Committee. The Committee would like to be apprised within a period of six months about the position of the appeals which have been disposed of after the amendment of the Act, still pending for disposal and for how long these appeals have been pending.

Disposal of Cases

(Sl. Nos. 23, 24 Paras 3.94 & 3.95)

1.23 The Committee had noted that during the period 1987 to 1989, out of 911 cases under prosecution for violation of FERA only 345 could be finalised. The balance 566 cases were pending in different courts at the end of 1989. The Committee had found that no systematic study had ever been conducted to ascertain the reasons for this situation. The Committee had, therefore, desired that not only special courts should be set up for the purposes of prosecuting economic offenders, but also that such courts should be manned by the officials from the Directorate of Enforcement and the Departments of Customs and Central Excise and the Income-tax subject to their having appropriate legal qualification.

1.24 The Committee has recommended that Government should take immediate steps to set up special courts for economic offenders in consultation with the State Governments. For this purpose they also recommended that the matter may be deliberated upon in the next Conference of Chief Ministers to be convened at an early date.

1.25 The Ministry in its action taken reply has stated that it has been the endeavour of Government to persuade the States to set up Special Courts for Economic Offences. While some States have set up these special courts, others have yet to do so despite their general agreement to set up such courts.

1.26 The Committee are concerned to note that the Ministry has not cared to indicate the number of special courts set up for economic offences in different States and the States which are in general agreement to set up such courts but have not yet done so. Since the Civil Courts are generally over-burdened, and the pendency of cases in courts are increasing day by day, it is absolutely necessary that the Special Courts are set up in all the States for prosecuting economic offenders and to dispose of all pending cases expeditiously. The Committee while reiterating their earlier recommendation would like to be apprised of the action taken in this matter by the Ministry within a period of six months.

Organisational aspects

(Sl. Nos. 27 to 30, Para Nos. 4.33 to 4.36)

1.27 The Committee were distressed to find that organisational aspects of the Directorate of Enforcement have received little attention hitherto, partly due to perceived impermanence of FERA in the initial years of its formation.

1.28 The Committee has desired that the Government would now pay serious attention to the organisational aspects of Enforcement Directorate.

1.29 The Committee had also noted with concern that the organisational set up of the Directorate had not grown proportionally in relation to the aims and objectives for which it was created. The Committee had found that shortage of staff had not only resulted in arrears of work, but the quality of work had also deteriorated. They had recommended that the Ministry should take up with immediate effect, the reassessment of staff strength of the Directorate, and equip the Directorate with adequate staff, commensurate with its current work load.

1.30 The Committee had also desired that there should be a regular periodical review of the manpower requirement in the Directorate to maintain the health of this organisation.

1.31 The Ministry in its action taken reply has stated that the recently introduced changes in FERA 1973 and the full convertibility of Indian rupee on trade account are expected to substantially limit the functions and activities of the Directorate of Enforcement. The organisational structure of the Directorate will be reviewed after these changes have been in force for a reasonable period of time.

1.32 The Committee desire that the Ministry should review the organisational structure of the Directorate of Enforcement on the basis of the experience gained so far in view of the changes introduced in FERA 1973. They hope that while reviewing the organisational structure afresh, manpower requirement will be assessed in the light of overall need to improve the quality of investigation. They also hope that after review, the staff found in excess of the requirement will be utilised properly. The Committee may be apprised of the results of the review so made.

Complaints

(Sl. No. 34 Para 5.16)

1.33 The Committee had been informed that the number of complaints received in the Directorate of Enforcement was limited and that these were not of a serious nature. Taking into account the fact that the Directorate had to enforce the various provisions of FERA and COFEP-OSA which directly Affected the sensitive sections of public and which offered considerable scope of misuse of powers, the Committee had felt that the above statement was not a correct index of harassment which citizens had to put up with. From the observations of Secretary, Department of Revenue, the Committee were inclined to conclude that those who bore the brunt of harassment and corrupt practices on the part of Enforcement officials are wary of making direct complaints due to the fear of further harassment.

1.34 In order to improve this state of affairs the Committee had desired that Directorate should make a determined effort to enquire into the substance of even anonymous complaints. They had felt this was essential to demonstrate the seriousness of the Directorate in tackling this situation

and thus, enhancing the confidence of the public. The Committee were of the opinion that Complaint Cell in the Directorate ought to have functioned more effectively. The whole system of registering and redressing of complaints therefore needed to be thoroughly overhauled. The Committee had desired the Ministry to lose no time in doing the needful.

1.34(a) The Ministry in its action taken reply has stated that the recommendation of the Committee had been noted.

1.35 The Committee had recommended that the substance of even anonymous complaints should be enquired into to tackle the situation and to enhance the confidence of public. They had also recommended that the whole system of registering and redressing of complaints should be overhauled without further loss of time. The Committee are concerned to note that even after a lapse of one year, rather than giving any specific reply to the recommendations of the Committee, the Ministry has merely stated that the recommendation of the Committee has been noted. The Committee would like to express their unhappiness at this sort of reply. It was expected of the Ministry to state in clear terms the concrete steps taken for overhauling the system of registering and redressing of complaint for effective functioning of the Complaint Cell in the Directorate. The Committee would like to be informed of the action taken in this regard.

Vigilance Cases

(Sl. No. 35 Para 5.17)

1.36 The Committee had noted that only 6 vigilance cases had been registered between 1.7.1987 and 30.6.1990 against the officers of the Directorate. They were further disappointed to find that only 3 cases had been disposed during this period. The Committee had also been informed that no effective measures had been taken in these vigilance cases. The Department had conceded that the action by way of vigilance had been inadequate. The Committee were not satisfied by the statement of the Secretary Revenue that watch was being kept on officers of doubtful integrity and that deterrent action had been taken in some cases. They were constrained to conclude that the existing set up of vigilance cell had not proved to be very effective.

1.37 The Committee, therefore had desired the Ministry to take suitable measures to strengthen the existing vigilance set up so that appropriate action against the corrupt officials could be initiated expeditiously. They also desired that the corruption cases pending with Directorate should be dealt with seriousness and expedition.

1.38 The Ministry in its action taken reply has stated that the Committee's recommendation has been noted.

1.39 The Committee are unhappy to find that the Ministry has not cared to enumerate the measures taken to strengthen the existing vigilance set up and to finalise the pending corruption cases even after a lapse of more than

one year when the recommendation was made. Instead the Ministry has chosen to give a vague reply that the recommendation of the Committee has been noted. This is yet another instance where the reply of the Ministry is most casual and evasive. While reiterating their earlier recommendation, the Committee would like the Ministry to take appropriate expeditious steps to strengthen the existing set up of the vigilance cell and also to dispose of the pending corruption cases expeditiously. The Committee would like to be informed of the steps taken in this regard within a period of three months.

Implementation of Recommendations

1.40 The Committee are unhappy to note that in a number of cases, the replies were evasive and casual. They cannot but deplore this attitude on the part of the Ministry and expect the Ministry to be more careful in future in furnishing action taken replies to the recommendations of the Committee.

1.41 The Committee would like to emphasize that greatest importance has to be attached to the implementation of recommendations accepted by Government. They expect Government to take expeditious steps in implementing such recommendation. In case it is not possible to implement the recommendation, in letter and spirit, for any reason the matter should be reported to the Committee in time with reasons for non implementation.

CHAPTER II

RECOMMENDATIONS/WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation Sl. No. 4 (Para 1.26)

The Committee have also examined the question of according greater independence to the Directorate of Enforcement in its functioning so as to make it more impartial and free from undue interference. In this context they realise the importance of having persons of high integrity and unimpeachable moral standards to head the organisation. They also appreciate the sensitivity or assignment and the desirability of having an incumbent who enjoys the confidence of political authority holding forte.

While it may not be practicable to have a fixed tenure for Director of Enforcement, the Committee desire that the Government must give a serious consideration to the matter and adopt ways and means for encouraging the officers holding the post to act with utmost independence and impartiality.

Reply of the Government

The recommendation has been noted.

Recommendation Sl. No. 12 (Para 3.29)

The Committee also note that a Central Economic Intelligence Bureau has been set up for coordinating the investigative efforts and enforcement actions by various agencies connected with investigations into economic offences and enforcement of economic laws. The Bureau is expected to maintain liaison with the concerned Departments and Directorates both at the Central as well as State level.

The Committee desire suitable measures be taken to ensure that this bureau is allowed to function effectively without overlapping the functions of proper intelligence cell in the Directorate of Enforcement.

Reply of the Government

The recommendation has been noted.

Recommendation Sl. No. 13 (Para 3.30)

The Committee are happy to note that the Directorate is in the process of evolving new methods of collecting intelligence in specified fields.

They hope that these new methods will be expeditiously evolved and utilised for collecting information and intelligence. The Committee would like to be kept informed of the progress achieved in this regard.

carry out searches with malafide motives but would also expect Government to amend the law in such a manner as would give the citizens adequate legal protection against such harassment.

Reply of the Government

The provisions of Section 58 of FERA censer 1973 which provides for prosecution of such officers of enforcement who conduct/order searches etc. without reasonable grounds, has been amended to enhance the punishment which would include imprisonment upto two years in addition or fine to the extent of Rs. 10,000/ or both.

Recommendation Sl. No. 18 (Para 3.75)

As provided under FERA the Enforcement Officers exercise powers of adjudication in regard to cases of FERA violations. These powers are exercised in a quasi-judicial manner and orders passed thereafter are also subject to review by FERA Appellate Board. The Committee were informed that on an average the adjudication of cases takes about 14 months. The Committee are disconcerted to observe that between 1987 and 1989 a high proportion of the cases registereed, approximating to almost 73% have been lying pending. They are shocked to find that some cases which are more then ten years old are still pending at various stages of adjudication. The Committee have also been informed that the Department is considering various suggestions to expedite adjudication cases. In this context they are also constrained to note that even after a lapse of 18 years no norms have been fixed in regard to maximum period within which a case has to be finalised. The Committee believe that it is essential in this regard to arrive at a rational norm in regard to the number of cases an officer can dispose of within a given period. The Committee also find that no time limit has been fixed for registration of the cases. The Committee are of the firm view that adjudication process should be time bound.

They, therefore, urge that reasonable time-limits may be fixed without further delay. They also hope that suggestions spelt out by the Department for reducing delays will be implemented forthwith. Similarly time-limit may be fixed for registration of cases.

Reply of the Government

Section 41 of the FERA 1973 has been amended to reduce the time limit for issuing a show-cause notice to the party after completion of investigation from the existing period of one year to six months. As regards expeditious completion of adjudication of the cases after issue of show-cause notice, the following norms for disposal of adjudication cases by various levels of officers have been departmentally fixed at different levels:

- | | |
|-------------------------|--------------------|
| (a) Assistant Director | 30 cases per month |
| (b) Deputy Director | 20 cases per month |
| (c) Additional Director | 30 cases per month |
| (d) Special Director | 15 cases per month |

As regards the fixation of time limits recommended by the Committee, it may be stated that since adjudication is a quasi judicial proceeding, it would not be advisable to fix any statutory time limits.

Recommendation Sl. No. 19 (Para 3.76)

The Committee will like to advise the Directorate not to overburden its officers with large number of cases as such a practice can only result in delays in adjudication and non-observance of whatever norms may be adopted for assessing their performance. They, therefore, urge the Government to look into this aspect with due seriousness. They also desire to be informed about the steps taken in this regard.

Reply of the Government

The problem of over-burdening of the officers of the Directorate is expected to get resolved with the recently introduced changes in FERA.

Recommendation Sl. No. 20 (Para 3.77)

The Committee have been informed that one of the main reasons for delay is that Show Cause Notice are being prepared on an off hand manner without incorporating specific charges and without looking into the details of evidence. This not only delays adjudication proceedings but also results in harassment to the concerned parties as they have to ask for this information again and again.

The Committee desire that specific and detailed guidelines may be issued to the concerned officers in this regard and action taking in case these are not followed.

Reply of the Government

The recommendation of the Committee for framing specific and detailed guidelines for incorporating specific charges with reference to details of evidence in the Show Cause Notices has been noted. Existing guidelines on the subject have been taken up for examination from this view-point.

Recommendation Sl. Nos. 21 & 22 (Paras 3.78 & 3.79)

The Committee also regret to find that as on 31st December, 1989, 1268 appeals were pending before the FERA Board and that some of these appeals pertain to the year 1977. They are further dismayed to note that the percentage of disposal of the appeals during 1987-88 and 1989 has been as low as 35%, 31% and 27% respectively. The Committee are, therefore, constrained to conclude that the above shortage of officers indicates a casual approach of the Government in clearing the backlog.

The Committee would like the Ministry to take immediate steps so that the backlog of appeals can be cleared expeditiously.

The Committee need hardly emphasize the paramount importance of imparting regular and indepth training in these subjects to the officers/staff of the Directorate.

The Committee, therefore, desire that not only the officers at higher level but also those at middle and lower levels should be regularly trained so as to acquaint them with relevant aspects of commercial law accounting and practices, besides the modern techniques of investigation. The Committee would expect the Ministry to continue to organise workshops at regular intervals for the purpose.

Reply of the Government

At present the Directorate of Enforcement makes arrangement to provide training facilities to its officers with the National Academy of Customs & Central Excise. The Committee's recommendation to organise workshops has been noted.

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF GOVERNMENT'S REPLIES

Recommendation Sl. Nos. 1 & 2 (Paras 1.23, 1.24)

The Committee note that the Directorate of Enforcement has been created under the Foreign Exchange Regulation Act (FERA) which, upto 1957 was being looked upon as only a transitory legal document for exchange control purposes. However, in that year both FERA as well as Directorate of Enforcement assumed a permanent footing. The FERA was revamped in 1973. At the same time the Directorate has also grown organisationally as also in terms of its responsibilities.

The Committee find that right from its inception in 1947 and thereafter the Directorate has been working under the administrative control of different departments/agencies of the Government. To begin with it functioned as part of Exchange Control Department in Reserve Bank of India. Thereafter it has been placed either under the Department of Economic Affairs or under Department of Revenue at different stages and for different spells. During the period (1975-77) when emergency was enforced the Directorate was placed under Cabinet Secretariat Department of Personnel. As present the Directorate depends for its manpower requirement largely on the Department of Revenue. Moreover Department has to maintain an active interaction with this Department as most of the violations of FERA have crosslinkages with matters falling under one or the other organisation under Department of Revenue. On the other hand the administration of FERA, which involves determination of policy questions and amendments in the law, falls under the Department of Economic Affairs. The Committee are of the view that this policy of shifting the Directorate from one Ministry/Department to another and back is not desirable or conducive to efficiency. They are not inclined to agree with the contention that the Directorate should be placed under one or the other Department merely on the basis of the scale of its interaction with them. The Committee were informed that the balance of advantage seems to lie in retaining the Directorate under the administrative control of the Department of Revenue.

The Committee do not agree with the existing arrangement. They are of the view that for smooth functioning of the Directorate is desirable that the administrative control of the Directorate should be with the Department of Economic Affairs which also dealt with the administration of FERA so that the deficiencies and amendments in FERA which come to the notice

The Committee also wish to lay stress upon the need to have an arrangement whereby the intelligence is received, shifted, evaluated and assessed by officers who are not directly concerned with the operative part of enforcement activity. The Committee believe that this will impart greater objectivity to the functioning of the Directorate as a whole, as also minimise the possibility of Enforcement Officers frittering away their energy in following up cases which are either not genuine or where poor intelligence forecloses chances of success.

The Committee, therefore, are inclined to agree with the views expressed by Secretary, Revenue during evidence that the collection of intelligence as well as its evaluation and assessment are almost inseparable at the operational level. In this regard they wish to point out that as far back in 1979 the Yardi Committee had recommended the setting up of a separate wing at the apex and zonal level of the Directorate of Enforcement for collection and dissemination of intelligence. The same Committee had also recommended that the Directorate of Intelligence should be entrusted to a special Director with full accountability to the Directorate of Enforcement.

The Committee, therefore, hope that the Government will take expeditious and effective steps to revamp the intelligence set up in the Directorate of Enforcement and for this purpose, appoint a special officer of sufficient seniority who can exclusively look after the intelligence work. A cell with appropriate staff strength should also be established to assist him in this regard.

The Committee also desire that the Department of Revenue should take suitable measures in improving special investigation manuals containing material on techniques of evasion of tax, smuggling and foreign exchange violations. These manuals should be supplied to Investigating Officers as already recommended by the Yardi Committee in 1979.

The Committee are also informed that there exist certain areas of intelligence which fall under the purview of other agencies involved in collection and processing of economic intelligence but are being neglected at present by such agencies.

The Committee hope that adequate steps would now be taken to bring such matters also within the purview of a strengthened intelligence apparatus within the Directorate of Enforcement without duplicating the work of other intelligence agencies. The Committee expect that appropriate additional staff will be authorised to the Directorate for this purpose.

Reply of the Government

With the far reaching changes made recently in the FERA, 1973 and the recently introduced full convertibility of the Indian rupee on trade account, there is a need for pruning the activities and staff strength of the Directorate of Enforcement rather than strengthening it as recommended by the Committee. The intelligence collection and evaluation systems of

the Directorate including instructions on the subject, will be re-organised in accordance with the needs of the changed situation.

Recommendation Sl. No. 25 (Para 3.96)

The Committee are of the firm opinion that the Department should have freedom to engage lawyers of known competence without being obliged to confine their choice to a panel of lawyer of Central Government. The Committee, therefore, strongly support the need of the Department to have sufficient financial powers for obtaining services of lawyers of appropriate standing in order to defend in the courts of law cases involving large sums of money. They urge the Government to examine this matter with earnestness in consultation with the Ministry of Law.

The Committee would also like to stress upon the need for strengthening the legal set up within the Directorate of Enforcement. For this purpose they recommend creation of attractive promotion prospects in order to draw and retain officers of sound legal knowledge and experience. The Ministry may also appoint officers of sufficient experience and legal background on contract basis. The Committee would also desire the Ministry to review the present timelag in disposal of cases at different places and take necessary remedial measures in this regard.

Reply of the Government

With the far reaching changes introduced in the FERA, 1973 and the recently introduced full convertibility of the Indian rupee on the trade account, the number of complicated cases of FERA violations requiring engagement of Senior lawyers is expected to be considerably reduced. The existing set up in the Directorate should, therefore, be sufficient for the purpose.

The aggregate outstandings included an amount of Rs. 158 crores in respect of exports to countries facing externalisation difficulties.

It would be seen from the above table that while there has been a gradual increase in the amount of outstanding export bills as well as total exports of the country, the percentage of outstanding export bills to aggregate exports has continued to remain within a limit of 5%. Notwithstanding this RBI continues to maintain a vigorous follow up with various banks, which is on-going in nature, in order to ensure that the export outstandings are kept to the minimum.

Recommendation Sl. Nos. 23 & 24 (Paras 3.94, 3.95)

The Committee note that during the period 1987 to 1989 out of 911 cases under prosecution for violation of FERA only 345 could be finalised. The balance 566 cases were pending in different courts at the end of 1989. They also note that average period for disposal of cases has been varying from place to place. The Committee are, therefore, constrained to infer that the pace of disposal of cases being prosecuted has been tardy. Consequently the pendency of such cases in courts has been increasing day by day. The Committee also find that no systematic study has ever been conducted to ascertain the reasons for this situation. In this context they were informed during evidence that the problem was attributable to general over burdening of civil courts at various levels as also be inadequate defence of such cases on the part of the Government. The Committee were further apprised that economic offenders were often able to obtain the services of the best legal professionals. As against this the Department has to be content with the services of lawyers who are poorly paid and totally ill motivated even in cases involving substantial sums of money. It was suggested that not only special courts be set up for the purposes of prosecuting economic offenders, but also that such courts should be manned by the officials from the Directorate of Enforcement and the Departments of Customs and Central Excise and the Income-Tax subject to their having appropriate legal qualification.

The Committee have no hesitation in recommending that Government should take immediate steps to set up special courts for economic offenders in consultation with the State Governments. For this purpose they also recommend that the matter may be deliberated upon in the next Conference of Chief Ministers to be convened at an early date. The Committee, however, are not convinced by the argument that such courts would become efficient by merely appointing officers drawn from the above mentioned organisations. On the contrary such a step may result in judicial improprieties.

Reply of the Government

It has been the endeavour of Government to persuade the States to set up Special Courts for Economic Offences. While some States have set up these special courts, others have yet to do so despite their general agreement to set up such courts.

Recommendation Sl. No. 34 (Para 4.40)

The Committee have been informed that the number of complaints received in the Directorate of Enforcement is limited and that these were not of a serious nature. Taking into account the fact that the Directorate has to enforce the various provisions of FERA and COFEPOSA which directly effect the sensitive sections of public and which offer considerable scope of misuse of powers, the Committee feel that the above statement is not a correct index of harassment which citizens have to put up with. From the observations of Secretary, Department of Revenue, the Committee are inclined to conclude that those who bear the brunt of harassment and corrupt practices on the part of Enforcement officials are vary making direct complaints due to the fear of further harassment.

In order to improve this state of affairs the Committee desire that Directorate should make a determined effort to enquire into the substance of even anonymous complaints. They feel this is essential to demonstrate the seriousness of the Directorate in tackling this situation and thus, enhancing the confidence of the public. The Committee are of the opinion that Complaint Cell in the Directorate ought to have functioned more effectively. The whole system of registering and redressing of complaints therefore needs to be thoroughly overhauled. The Committee expect the Ministry would lose no time in doing the needful.

Reply of the Government

The recommendation of the committee has been noted.

Recommendation Sl. No. 35 (Para 5.17)

The Committee note that only 6 vigilance cases have been registered between 1.7.1987 and 30.6.1990 against the officers of the Directorate. They are further disappointed to find that only 3 cases have been disposed during this period. The Committee have also been informed that no effective measures have been taken in these vigilance cases. The Department has conceded that the action by way of vigilance has been inadequate. The Committee are not satisfied by the statement of the Secretary Revenue that watch is being kept on officers of doubtful integrity and that deterrent action has been taken in some cases. They are constrained to conclude that the existing set up of vigilance cell has not proved to be very effective.

The Committee, therefore, desire the Ministry to take suitable measures to strengthen the existing vigilance set up so that appropriate action against

the corrupt officials is initiated expeditiously. They also desire that the corruption cases pending with Directorate should be dealt with seriousness and expedition.

Reply of the Government

The Committee's recommendation has been noted.

CHAPTER V

**RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH
REPLIES OF GOVERNMENT ARE AWAITED**

— NIL —

**NEW DELHI;
August 19, 1993**

Sravana 28, 1915(S)

DR. KRUPASINDHU BHOI,
Chairman,
Estimates Committee.

APPENDIX I

(Vide reply of the Government to the recommendation at Sl. No. 7 para 2.23 in Chapter III)

REGISTERED NO. DL-33004/92

The Gazette of India

E X T R A O R D I N A R Y

PART II-Section 1.

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Separate paging is given to this part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 8th January, 1993/Pausa 18, 1914 (Saka)

THE FOREIGN EXCHANGE REGULATION
(AMENDMENT) ORDINANCE, 1993
No. 9 of 1993

Promulgated by the President in the Forty-third year of the Republic of India
An Ordinance further to amend the Foreign Exchange Regulation Act, 1973

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution the President is pleased to promulgate the following Ordinance:—

- | | |
|---------------------------------|---|
| Short title and commencement. | 1. (1) This Ordinance may be called the Foreign Exchange Regulation (Amendment) Ordinance, 1993.
(2) It shall come into force at once. |
| Amendment of long title. | 2. In the Foreign Exchange Regulation Act, 1973 46 of 1973.
(hereinafter referred to as the principal Act), in the long title, the words "and bullion" shall be omitted. |
| Omission of Sections 11 and 12. | 3. Sections 11 and 12 of the principal Act shall be omitted. |

4. In section 13 of the principal Act,—
- (a) in sub-section (1), the words “any gold or silver or” shall be omitted;
- (b) in sub-section (2), the words “gold, jewellery or precious stones or” shall be omitted.
5. Sections 15 and 17 of the principal Act shall be omitted.
6. In section 18 of the principal Act, after sub-section (10), the following Explanation shall be inserted, namely:—
- Explanation—For the purposes of this section, “goods” includes gold, silver, jewellery and precious stones.”
7. After section 18 of the principal Act, the following section shall be inserted, namely:—
- “18A. (1) No person shall, except with the general or special permission of the Reserve Bank, take or send out by land, sea or air any goods from India to any place on lease or hire or under any arrangement other than sale or disposal in any other manner of such goods.
- (2) The provisions of section 18 shall, so far as may be, apply to the taking or sending out of goods under sub-section (1).”
8. In section 19 of the principal Act,—
- (a) in sub-section (1), clause (c) shall be omitted;
- (b) in sub-section (4), clause (c) shall be omitted;
- (c) for sub-section (5) and (6), the following sub-sections shall be substituted, namely:—
- “(5) Notwithstanding anything contained in any other law, no transfer of any share, bond or debenture of a company registered in India made by a person resident outside India or by a national or a foreign State to another person resident in India shall be valid unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferor or the transferee.
- (6) If the Reserve Bank is of the opinion that it is necessary or expedient in the public interest so to do, it may, by general or special permission, exempt any transfer referred to in sub-section (5) or any class of such transfers from the operation

Amendment
of section
13.

Omission of
sections 15
and 17.

Amendment
of section
18.

Insertion of
new section.

Payment for
lease, hire
or other
arrangement.

Amendment
of section
19.

of the provisions of that sub-section, subject to such conditions, if any, as may be specified in such permission.”.

Omission of sections 20 and 21.

9. Sections 20 and 21 of the principal Act shall be omitted.

Amendment of section 22.

10. In section 22 of the principal Act, the words “The Central Government may, by notification in the Official Gazette, order that” shall be omitted.

Omission of section 23.

11. Section 23 of the principal Act shall be omitted.

Amendment of section 25.

12. In section 25 of the principal Act,—

(a) in sub-section (1), for the words “permission of the Reserve Bank” the words “general or special permission of the Reserve Bank” shall be substituted;

(b) sub-section (3) shall be omitted.

Substitution of new section for section 26.

13. For section 26 of the principal Act, the following section shall be substituted, namely:—

Certain provisions as to guarantee in respect of debt or other obligation.

“26. Except with the general or special permission of the Central Government or the Reserve Bank, no person resident in India shall give a guarantee in respect of any debt or other obligation or liability—

(i) of a person resident in India, and due or owing to a person resident outside India, or

(ii) of a person resident outside India”.

Omission of section 27.

14. Section 27 of the principal Act shall be omitted.

Amendment of section 28.

15. In section 28 of the principal Act,—

(a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:

“(1) Without prejudice to the provisions of section 47 and notwithstanding anything contained in any other provision of this Act or the Companies Act, 1956, person resident outside India (whether a citizen of India or not) or a person who is not a citizen of India but is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India or any branch of such company, shall not, except with the general or special permission of the Reserve Bank, act or accept appointment, as agent in India of any person

or company, in the trading of commercial transactions of such person or company.

·(2) Where any such person or company (including its branch) as is referred to in sub-section (1) acts or accept a appointment as such agent without the permission of the Reserve Bank such acting or appointment shall be void.”.

(b) In the explanation, clause (d) shall be omitted.

16. In section 29 of the principal Act,—

Amendment
of section 29.

(a) in sub-section (1), the words “or in which the non-resident interest is more than forty per cent.” shall be omitted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) A company (other than a banking company) in which the non-resident interest is more than forty per cent., shall not, except with the general or special permission of the Reserve Bank, carry on in India any activity relating to agriculture or plantation or acquire the whole or any part of any undertaking in India of any person or company carrying on any activity relating to agriculture or plantation or purchase the shares in such company.”

(c) after sub-section (4), for the Explanation, the following Explanation shall be substituted, namely:—

‘Explanation.— For the Purposes of this section,—

(i) “company” has the same meaning as in clause (b) of the Explanation to section 28;

(ii) “non-resident interest” means participation in the share capital by, or entitlement to the distributable profits of, any individual or company resident outside India, or any company not incorporated under any law in India, or any branch of such company whether resident outside India or not.”.

17. In section 30 of the principal Act, for sub section (1), the following sub-section shall be substituted, namely:—

Amendment
of section 30.

“(i) No national of a foreign State shall, without the previous permission of the Reserve Bank,

practise any profession or carry on any occupation, trade or business in India in a case where such national desires to acquire any foreign exchange (such foreign exchange being intended for remittance outside India) out of any moneys received by him in India by reason of the practising of such profession or the carrying on of such occupation, trade or business, as the case may be.”

Amendment
of section 31.

18. In section 31 of the principal Act, in sub-section (1), the words “or in which the non-resident interest is more than forty percent.” shall be omitted.

Omission
of section 32.

19. Section 32 of the principal Act shall be omitted.

Amendment
of Sections
35, 37, 46
and 62.

20. In sections 35, 37, 46 and 62 of the principal Act, for the words and figures “Code of Criminal Procedure, 1898,” the words and figures “Code of Criminal Procedure, 1973” shall be substituted.

5 of 1898
2 of 1974

Amendment
of section 41.

21. In section 41 of the principal Act,—

(a) for the words “one year”, wherever they occur, the words “six months” shall be substituted;

(b) after clause (ii), the following proviso shall be inserted, namely:—

“Provided that the aforesaid period of six months may, for reasons to be recorded in writing, be extended by the Director of Enforcement for a further period not exceeding six months.”

Amendment
of section 42.

22. In section 42 of the principal Act,—

(a) in sub-section (1), in clause (i), after the word and figures “section 18” the words, figures and letter “or section 18A” shall be inserted;

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(4) where any foreign currency, being the subject-matter of any investigation or proceeding referred to in sub-section (1), is in the custody of an officer of customs or of an officer of Enforcement or of a court, the Collector of Customs, the Director of Enforcement or, as the case may be, the court may,

having regard to the security-risk involved in such custody, direct that the foreign currency be deposited in a bank in such manner as he or it may deem fit.

(5) where any draft, cheque (including traveller's cheque) or other instrument is to be encashed under sub-section (1) or any foreign currency is to be deposited in a bank under sub-section (4), the Collector of Customs, the Director of Enforcement or, as the case may be, the court, may prepare or cause to be prepared an inventory of such draft, cheque or other instrument or foreign currency containing such details relating to its description, mark, numbers, country of origin and other particulars as may appear to be relevant to its identity in any proceeding under this Act and where the inventory is prepared or cause to be prepared by the Collector or the Director, the Collector or, as the case may be, the Director shall make an application to a Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the magistrate photographs of such draft, cheque, other instrument or foreign currency, and certifying such photographs as true.

(6) where an application is made under sub-section (5), the Magistrate shall, as soon as may be, allow the application.”.

23. In section 43 of the principal Act, in sub-section (5), the words and figures “and to a person to whom a licence has been granted or deemed to have been granted under section 32” shall be omitted.

Amendment
of section 43.

24. In section 45 of the principal Act,—

Amendment
of section 45.

5 of 1898

(a) in sub-section (1), for the words and figures “Code of Criminal Procedure, 1898, any police officer not below the rank of a Sub-inspector of Police” the words and figures “Code of Criminal Procedure, 1973, any police officer not below the rank of a Deputy Superintendent of Police” shall be substituted;

2 of 1974

5 of 1898

(b) in sub-section (3), for the words and figures “Code of Criminal Procedure, 1898”, the words and figures “Code of Criminal Procedure, 1973” shall be substituted;

2 of 1974

- Amendment of section 50. 25. In section 50 of the principal Act, for the word and figures "section 18" the words, figures and letter "section 18, section 18A" shall be substituted.
- Amendment of section 52. 26. In section 52 of the principal Act.—
- (a) in Sub-section (2) after, the words "any person aggrieved by such order may", the words "on payment of such fee as may be prescribed and" shall be inserted;
- (b) in sub-section (6), in the second proviso, for the word, "fifty thousand rupees", the words "two lakhs and fifty thousand rupees" shall be substituted.
- Amendment of section 53. 27. In section 53 of the principal Act, in sub-section (2), for the words and figures "sections 480 and 482 of the Code of Criminal Procedure, 1898" the words and figures "sections 345 and 346 of the Code of Criminal Procedure, 1973" shall be substituted. 5 of 1898
2 of 1974
- Amendment of section 56. 28. In section 56 of the principal Act,—
- (a) in sub-section (1), for the word and figures "section 18" the words, figures and letter "section 18, section 18A," shall be substituted.
- (b) in sub-sections (2) and (3), for the word and figures "section 18" wherever they occur, the words, figures and letter "section 18A" shall be substituted.
- (c) in sub-section (6), for the words and figures "the first proviso to section 188 of the Code of Criminal Procedure, 1898" the words and figures "the proviso to section 188 of the Code of Criminal Procedure, 1973" shall be substituted. 5 of 1898
2 of 1974.
- Amendment of section 58. 29. In section 58 of the principal Act,
- (a) in sub-section (1), for the words "be punishable with fine which may extend to two thousand rupees" the words "be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both" shall be substituted.
- (b) in sub-section (2), for the words "two thousand rupees" the words "ten thousand rupees" shall be substituted.

30. In section 61 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—
- Amendment of section 61.
- 2 of 1974
- “(1) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 it shall be lawful for any metropolitan magistrate and for any magistrate of the first class to pass sentence of imprisonment for a term exceeding three years or of fine exceeding five thousand rupees on any person convicted of an offence punishable under section 56”.
31. In section 64 of the principal Act, in sub-sections (1) and (2), for the word and figures “section 18” shall be substituted.
- Amendment of section 64.
32. In section 66 of the principal Act, in sub-section (1), for the words and figures “section 562 of the Code of Criminal Procedure, 1898” the words and figures “section 360 of the Code of Criminal Procedure, 1973” shall be substituted.
- Amendment of section 66.
- 5 of 1998
- 2 of 1974
33. In section 67 of the principal Act, for the word and figures “section 18”, the words, figures and letter “section 18, section 18A” shall be substituted.
- Amendment of section 67.
34. In section 71 of the principal Act, in sub-section (3) for the words “two hundred and fifty rupees” the words “fifteen thousand rupees” shall be substituted.
- Amendment of section 71.
35. In section 73 of the principal Act, in sub-section (3), the words and figures “persons referred to in sub-section (1) of section 32” shall be omitted.
- Amendment of section 73.
36. After section 73 of the principal Act, the following section shall be inserted, namely:—
- Insertion of new section section 73 ‘A’
- “73A. Where any authorised dealer contravenes any direction given by the Reserve Bank under this act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving a reasonable opportunity of being heard impose on the authorised dealer a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which, may extend to two thousand rupees for every day during which such contravention continues”.
- Penalty for contravention of direction of Reserve Bank or for failure to file returns.

Amendment
of section 74

37. In section 74 of the principal Act, in clause (i) for the figures and word "9, 10 or 11", the figures and word "9 or 10" shall be substituted.

Amendment
of section 79

38. In section 79 of the principal Act, in sub-section (2), after clause (d) the following clause shall be inserted, namely:—

"(dd) prescribe the fee payable by a person preferring appeal to the Appellate Board under sub-section (2) of section 52".

SHANKER DAYAL SHARMA,
President.

A.C.C. UNNI, Additional Secretary to the Govt. of India

APPENDIX II

(Vide Introduction of the Report)

Analysis of Action Taken by Government on the 6th Report of Estimates Committee (10th Lok Sabha)

I. Total number of Recommendations	35
II. Recommendations / Observations which have been accepted by Government (Nos., 4, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33)	
Total	19
Percentage	54.2%
III. Recommendations/Observations which the Committee do not desire to pursue in view of Government's replies (Nos. 1, 2, 7, 8, 9, 10, 11, 25)	
Total	8
Percentage	22.9%
IV. Recommendations/Observations in respect of which Government's replies have not been accepted by the Committee (Nos. 3, 5, 6, 14, 23, 24, 34, 35)	
Total	8
Percentage	22.9%
V. Recommendations/Observations in respect of which final replies are still awaited.	NIL

APPENDIX III
ESTIMATES COMMITTEE

(1993-94)

Minutes

3rd Sitting

16.8.1993

The Committee sat from 1500 to 1545 hours.

PRESENT

Dr. Krupasindhu Bhoi —*Chairman*

MEMBERS

2. Shri Pawan Kumar Bansal
3. Shri Parshuram Gangwar
4. Shri S.K. Gangwar
5. Shri Barelal Jatav
6. Shri R. Jeevarathinam
7. Shri Dau Dayal Joshi
8. Shri Rupchand Pal
9. Shri B. Akbar Pasha
10. Shri Kabindra Purkayastha
11. Shri Manku Ram Sodi
12. Shri Braja Kishore Tripathy
13. Shri Arvind Trivedi
14. Shri Laeta Umbrey
15. Shri Devendra Prasad Yadav

SECRETARIAT

1. Shri K K. Sharma—*Joint Secretary*
2. Shri R.C. Gupta —*Assistant Director*
3. Shri R. C. Kakkar—*Committee Officer*

The Committee considered and adopted the Draft Report on action taken by Government on the recommendations contained in the Sixth Report of Estimates Committee (10th Lok Sabha) on the Ministry of Finance (Department of Revenue) Directorate of Enforcement without any amendments/modifications.

The Committee authorised the Chairman to finalise the Draft Report in the light of factual verification received from the Ministry of Finance (Department of Revenue) and also to make verbal and consequential changes therein and present this Report to Lok Sabha.

The Committee then adjourned.