

HARYANA VIDHAN SABHA

REPORT

OF

THE COMMITTEE

ON

SUBORDINATE LEGISLATION

1980-81

(TWELFTH REPORT)

(As presented to the Haryana Vidhan Sabha
on the 23rd March, 1981).



HARYANA VIDHAN SABHA SECRETARIAT, CHANDIGARH

APRIL, 1981

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(11)

**COMPOSITION OF THE COMMITTEE
(1980-81)**

Chairmen—

- *Chaudhri Partap Singh Thakran.
- *Rao Ram Narain.

Members—

- Chaudhri Hari Chand Hooda.
- Chaudhri Jagjit Singh Pohloo.
- Dr. Kamla Verma.
- @ Sardar Lachhman Singh.
- @@ Chaudhri Birender Singh.
- Chaudhri Rajinder Singh.
- Chaudhri Verender Singh.
- Advocate General

Secretariat—

1. Shri Raj Krishan, Secretary.
2. Shri S.S. Ahlawat, Deputy Secretary.
3. Shri S.S. Sanghi, Under Secretary.

The Committee was originally constituted,—Vide Haryana Vidhan Sabha Secretariat Notification No. HVS—LA—1/80/43, dated the 29th April, 1980.

*Chaudhri Partap Singh Thakran resigned from the Chairmanship and Membership of the Committee with effect from the 14th January, 1981 (afternoon), on his appointment as Deputy Chairman of the Haryana State Planning Board, and in his place Rao Ram Narain was nominated as a Chairman of the Committee by the Speaker on the 31st January, 1981,—Vide Notification No. HVS—LA—(Sub-Leg.)-1/80/81/8, dated 2nd February, 1981.

@Sardar Lachhman Singh, resigned from the Membership of the Committee on his appointment as Minister, Haryana, on the 14th January, 1981,—Vide Notification No. HVS-LA (Sub-Leg.)-1/80/2, dated the 30th January, 1981.

@@ Chaudhri Birender Singh was nominated as a Member of the Committee by the Speaker on the 31st January, 1981,—Vide Notification No. HVS-LA—(Sub-Leg.)-1/80-81/8, dated the 2nd February, 1981.

INTRODUCTION

1. I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to submit the report on their behalf, present this twelfth Report.
2. The Committee, consisting of eight members including the Advocate General, was nominated by the Speaker, Haryana Vidhan Sabha, under Rule 243 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly on the 29th April, 1980 and was notified in the official Gazette, -Vide notification No. HVS-LA-1/80/43, dated the 29th April, 1980.
3. A brief record of the proceedings of each meeting of the Committee has been kept on record of the Haryana Vidhan Sabha Secretariat.
4. The Committee place on record their appreciation for the valuable and willing assistance given by the Administrative Secretaries/departmental officers and the representative of the Law Department in their deliberations.
5. The Committee also place on record their high appreciation of whole-hearted co-operation and assistance given by the Secretary, Haryana Vidhan Sabha and his staff.

CHANDIGARH :
The 5th March, 1981.

RAO RAM NARAIN,

Chairman.

REPORT

1. The Committee on Subordinate Legislation for the year 1980-81, consisting of eight Members including the Chairman and the Advocate General was nominated by the Speaker, Haryana Vidhan Sabha, under rule 243 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly on the 29th April, 1980, and was notified in the Official Gazette, vide notification No. HVS-LA-1/80/43, dated the 29 April, 1980.

2. Chaudhri Partap Singh Thakran was initially appointed as the Chairman of the Committee by the Speaker, who resigned from the Chairmanship and Membership of the Committee with effect from the 14th January, 1981 (afternoon), on his appointment as Deputy Chairman of the Haryana State Planning Board and in his place Rao Ram Narain was nominated as a Chairman of the Committee by the Speaker on the 31st January, 1981—vide notification No. HVS-LA-(Sub-Leg.)-1/80-81/8, dated the 2nd February, 1981.

The Committee held 48 sittings only during their term. Before scrutinising the rules and orders framed under certain Acts, the Committee discussed its scope and functions and the procedure for scrutinizing the rules, regulations, orders, etc.

SCOPE AND FUNCTIONS OF THE COMMITTEE

The scope and functions of the Committee are set down in rules 242, 250 and 251 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly. Rule 242 enjoins upon the Committee "to scrutinise and report to the House whether powers to make regulation, rules, sub-rules, bye-laws, etc. conferred by the Constitution or delegated by Legislature are being properly exercised within such delegation and consider such other matters as may be referred to it by the Speaker". Further, rule 250 of the said rules lays down that while examining any such set of rules, sub-rules, bye-laws, etc. the Committee shall, in particular consider:—

- (i) Whether it is in accord with the general objects of the Constitution or the Act pursuant to which it is made;
- (ii) whether it contains matters which in the opinion of the Committee should more properly be dealt within an Act of the Legislature ;
- (iii) whether it contains imposition of any tax;
- (iv) whether it directly or indirectly bars the jurisdiction of the courts ;
- (v) whether it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power ;

- (vi) whether it involves expenditure from the Consolidated Fund of the State or the Public Revenues ;
- (vii) whether it appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made ;
- (viii) whether there appears to have been unjustifiable delay in the publication or laying it before Legislature ;
- (ix) whether for any reason its form or purport calls for any elucidation.

Rule 251 lays down as follows :—

1. If the Committee is of opinion that any order should be annulled wholly or in part, or should be amended in any respect, it shall report that opinion and the grounds thereof to the House.
2. If the Committee is of opinion that any other matter relating to any orders should be brought to the notice of the House, it may report that opinion and matter to the House.

In short, the functions of the Committee are to see if the rules framed by the Executive are within the scope of the delegation made under the Act and do not go beyond the scope of such delegation. If the Committee finds that any rule is beyond the scope of the powers delegated under the Act by the Legislature, the Committee can recommend that the rule be suitably amended or omitted.

There are certain rules which are required by the statute to be laid before the Legislature. But, the Committee is competent to examine all the Rules/Regulations framed by the Government under various Acts, irrespective of the fact whether these have been placed on the Table of the House or not.

The Committee has framed the working rules, wherein the detailed procedure has been laid down. Generally, the Committee, from time to time, select certain set of rules framed under the various Acts for their scrutiny and examine them at the first instance at their own level with the assistance of the Law Department and the Vidhan Sabha Secretariat. The Committee then invites the Administrative Secretary concerned for oral examination to explain the discrepancies found in the various rules. After the rules and the departmental representatives have been examined, the Committee prepare the report and present it to the House.

Some of the parliamentary conventions established in connection with the scrutiny of rules, regulations, bye-laws, etc. are given below:—

- (1) The Committee would scrutinise only such rules as had already been framed and published in the Gazette and not the draft rules.

- (2) The Committee should see that rules are framed under an Act as early as possible after the commencement of the Act and in no case this period should exceed six months. If the rules are not framed within six months, the Committee may ask the Department about the reasons for the delay in framing the rules. This is only by convention.
- (3) Executive should ensure that no rule goes beyond the power delegated by the Legislature. If the rules go beyond the power delegated by the Legislature, the Committee may examine the same and report to the House.
- (4) The Executive should be impressed upon that whenever rules are framed or amendment are made in the existing rules, these should be serially and centrally numbered and should indicate in the margin of each rule, the reference of the section under which the rules are framed.

GENERAL OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

(1) Delay in framing the Rules

The Committee observe that the Government framed certain rules, orders etc. long after the relevant Acts have come into force. In this connection a few instances may be quoted. The Haryana Private Colleges (Taking Over of Management) Act was enacted in the year 1978 and the Haryana Private Colleges (Taking over of Management) Rules thereunder were framed in the year 1980. The Haryana General Sales Tax Act was enacted in the year 1973 and the Haryana General Sales Tax Rules thereunder were framed in the year 1975. The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act was enacted in the year 1952 and the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Rules thereunder were framed in the year 1956. The Punjab Co-operative Societies Act was enacted in the year 1961 while the Punjab Co-operative Societies Rules thereunder were framed in the year 1963. The Haryana Home Guards Act was enacted in the year 1974 and the Haryana Home Guards Rules thereunder were framed as late as in the year 1980. The Punjab Prohibition of Cow Slaughter Act was enacted and came into force in the year 1955 while the Haryana Prohibition of Cow Slaughter Rules thereunder were framed as late as in the year 1972. The Committee observed that in some of the cases there is a great time lag of the enactment of the Act and the framing of the rules. The Committee observe that it is not understood how in the absence of the rules and orders the provisions of the Act could exactly be carried out and are of the view that the delay in framing the rules actually defeats the very purpose and object of the Act under which they are framed.

In this connection the Committee on Subordinate Legislation of the Haryana Vidhan Sabha in its First Report for the year 1968-69 recommended that ordinarily rules should be framed as early as possible after the commencement of the Act and in no case this period should exceed six months. If no rules are framed within the said period after the commencement of the Act, the Department should bring in

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each case this fact to the notice of the Committee stating the reasons to the satisfaction of the Committee for not framing the rules within that period.

The Committee reiterated the said recommendations in all of their earlier eleven Reports. In spite of the repeated observations made by the Committee in this behalf in their previous Reports, the delay has still persisted in framing certain rules. The Committee reiterate the recommendations made in their previous reports and observe that ordinarily Rules should be framed as early as possible after the enactment of the Act and in no case this period should exceed six months. If no rules are framed within the said period after the enactment of the Act, the Department concerned should bring in each case this fact to the notice of the Committee stating the reasons to the satisfaction of the Committee for not framing the rules within that period.

(2) Supply of printed and up-to-date corrected copies of the Rules

The Committee observed that certain Departments supplied cyclo-styled or printed copies of the rules for scrutiny. During scrutiny of the rules, the Committee came across a large number of typographical/spelling mistakes in those cyclostyled or even printed copies, with the result that it was difficult for it to determine whether the errors were typographical or they actually existed in the rules, as originally published in the Gazette. The Committee, therefore, recommended that copies of the rules to be supplied to them by the Department should be in the printed form or in the form of Gazette in which they are published. If, however, it is not possible for the Departments to do so, it should be ensured that the copies of the rules, orders, etc. are up-to-date, meticulously prepared and duly corrected before supplying them to the Committee, to save their valuable time in pointing out such mistakes.

The Committee further recommend that it is the duty of the Department concerned to see that the rules supplied to the Committee are amended up-to-date and ensure that the suggestions/recommendations/observations made by the Committee from time to time and agreed to or implemented by the Government are incorporated in the Rules.

(3) Annexure to Amending Rules

The Committee in their tenth Report for the year 1978-79 had observed that—

“The Committee notices that at present in the case of amending rules only amendments are being issued and the rules to be amended are not appended therewith. It was also brought to the notice of the Committee that in the case of amending Bills the relevant sections of the Act sought to be amended are appended as Annexure to each such Bill. The Committee observe that the same procedure may be adopted in the case of amending Rules, i.e., in the case of every amending rule, the rule sought to be amended should also be appended as an annexure so that the Legislators in particular and the public in general should know the amendment and its effect”.

The Committee observed that this recommendation of the earlier Committee has not been implemented in letter and spirit so far.

The Committee recommend that the above observation/recommendation made by them in this behalf be implemented by all the Departments concerned and the Committee be informed at the earliest.

(4) Publishing the Acts and Rules in Hindi

The Committee observe that at present Acts and Rules are available in English Language only. The Regional Language of the State as well as National Language is Hindi. Under the Haryana Official Language Act, 1969, at present, whenever any Bill is introduced and is under consideration of the State Legislature, its authenticated Hindi translated version is also supplied to the Members. The Committee reiterate their earlier recommendations and recommend that all the Acts and Rules be translated into Hindi at the earliest and made available to the legislators and the public so that everybody may be able to know the law of the land.

(5) Laying of Rules on the Table of the House

The Committee has observed that a majority of the Acts contain provisions requiring the Government merely to publish the Rules framed there under in the official Gazette. There is no provision for laying them on the table of the House, with the result that the House can exercise no direct check over them. The Committee is of the view that there should be uniformity in the provisions of the Acts delegating legislative powers and recommend that in future all the Acts, enacted by the State Legislature whether falling in the State List or Concurrent List of Seventh Schedule of the Constitution of India, contain provisions for making rules should invariably lay down provision for laying of rules on the table of the House as soon as possible and the House should have the power to consider them. (In this connection a Memorandum prepared and approved by the Committee may be perused as an appendix 'I' to this report.

(6) Delay in laying Rules on the Table of the House

The committee recommends that where the rules, orders etc. are required to be laid on the table of the House/before the State legislature under any statute, the same should be laid on the Table of the House as early as possible immediately following such publication in the Gazette, so that the House may statutorily modify or annul such rules. If such rules are published, while the Assembly is in Session, the rules should be laid on the Table of the House during that Session.

The committee also recommends that in future each Government Department concerned should invariably forward with each set of "Orders" such as rules, orders, regulation, bye-laws, etc., the following Statement of "Orders" in respect of which there has been delay in framing the orders and laying them on the Table for the information of the Committee.

ANNEXURE

Statement of "Orders" such as rules, orders, regulations, etc. in respect of which there has been delay in framing the "Orders" and laying them on the Table—

Serial No.	Name of "Order"	Description of "Order"	Date of publication in the Gazette	Date of laying on the Table	Approximate delay and reasons of delay, if any	Department concerned
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(7) Supply of Copies of Codes, Acts and Rules etc.

The Committee for the year 1976-77 in their Report had observed "that the copies of the codes which are now published by the Law Department only contain the Acts and those do not contain the rules, orders, regulations, etc. framed under those Acts. The Committee observed that in future such rules, orders, regulations, etc. framed under the Acts should be published along with the Acts in the Codes."

The present Committee observe that this recommendation of the said Committee has lost the sight of the Government and the same has not been acted upon. Moreover, the Committee, during the scrutiny of certain rules, found that Government publication of the rules (i. e. the Haryana General Sales Tax Rules) were not available with the Department and the Committee was supplied with the copies of the Private publications, containing several amending slips, and in some cases the rules required republication for amending them up-to-date. The representative of the law Department during the scrutiny of Rules stated that all the requirements of the Committee could be met if there is a separate cell in the law Department headed by an Officer of the rank of Deputy Legal Remembrancer, for vetting, publication, republication and the codification of the rules.

The Committee, after considering all the pros and cons of the matter, recommend :—

- (1) The Codes should contain not only the Acts, but also the amended up-to-date copies of the Rules ;
- (2) the copies of the Codes be made amended up-to-date;
- (3) the rules, which have been amended from time to time, be made amended up-to-date and republished in the Gazette so that the copies of the rules in consolidated form may be available to the Committee readily and the public in general ;
- (4) the Legal Remembrancer should invariably in future supply at least ten up-to-date copies of the Acts to the Committee for studying them with a view to scrutinizing the rules framed thereunder;

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- (5) the Committee also recommend that copies of Rules as published in the Gazette and prepared by the Government Departments be supplied to them and avoid the supply of privately published copies of the rules for their scrutiny.

For all these purposes, the Committee recommend that a Separate Cell, headed by an Officer of the rank of Deputy Legal Remembrancer in the law Department, Haryana, may be set-up, immediately.

(8) Implementation of recommendation of the Committee

The committee for the year 1979-80 in their (Eleventh) Report examined the action taken by the Government on the recommendations/observations made by the previous Committee (s) in their first to Eighth Reports (1968-69 to 1975-76) and made further observations remarks in respect of the outstanding observations as contained in Appendix II of the said Report for the year 1979-80 under the heading "RECOMMENDATIONS OF THE COMMITTEE WHICH HAVE NOT SO FAR BEEN IMPLEMENTED BY THE GOVERNMENT AND COMMITTEE'S REMARKS THEREON".

The Committee observe with great regret that the work regarding the implementation of recommendations/observations including the outstanding recommendation made by the Committee in its previous reports i. e. (Appendix II of the said Reports), Ninth, Tenth and Eleventh Reports for the years 1976-77, 1978-79 and 1979-80, respectively, is very slow. The Committee, which works on behalf of the House, felt that the object with which it was constituted would be defeated if its recommendations are either not implemented at all or are implemented after a long time. The Committee, therefore, reiterate its earlier recommendations/observations made by them should be implemented within a period of three or four months after the presentation of the Report to the House. If however, any Department is unable to implement its observations/recommendations within the prescribed period an exhaustive memorandum should be sent to the Committee explaining the reasons for not implementing the recommendations/observations/observations within that period.

The Committee further recommends that the action on the outstanding recommendations and observations/recommendations contained in its earlier reports should be given top priority and expedited. The Committee also recommends that when a recommendation is implemented by the Government, the Department concerned should supply a copy of the notification containing the amendment in the rules along with the statement showing the action taken by the Government in the implementation of its recommendations/observations.

SCRUTINY OF RULES

The Committee scrutinised the following rules :—

1. The Haryana Ceiling on Land Holdings Rules, 1973 and the Haryana Utilisation of Surplus and other Areas Scheme, 1976, framed under the Haryana Ceiling on Land Holdings Act, 1972.
2. The Punjab Cooperative Societies Rules, 1963, framed under the Punjab Cooperative Societies Act, 1961.
3. The Haryana General Sales Tax Rules, 1975, framed under the Haryana General Sales Tax Act, 1973.
4. The Haryana Home Guards Rules, 1980, framed under the Haryana Home Guards Act, 1974.
5. The Haryana Prohibition of Cow Slaughter Rules, 1972, framed under the Punjab Prohibition of Cow Slaughter Act, 1955.
6. The Haryana Private Colleges (Taking over of Management) Rules, 1989, framed under the Haryana Private Colleges (Taking over of Management) Act, 1978.
7. The Haryana Affiliated Colleges (Scrutiny of Service) Rules, 1980, framed under the Haryana Affiliated Colleges (Security of Service) Act, 1979.
8. The Haryana Legislative Assembly (Facilities to Members) Rules, 1979, framed under the Haryana Legislative Assembly (Facilities to Members) Act, 1979.
9. The Punjab Improved Seeds and Seedlings Rules, 1950, framed under the East Punjab Improved Seeds and Seedlings Act, 1949.

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THE HARYANA CEILING ON LAND HOLDINGS RULES, 1973 AND THE HARYANA UTILISATION OF SURPLUS AND OTHER AREAS SCHEME, 1976, FRAMED UNDER THE HARYANA CEILING ON LAND HOLDINGS ACT, 1972.

The Committee observed that the Haryana Ceiling on Land Holdings Act to consolidate and amend the law relating to Ceiling on Land Holdings in the State of Haryana was enacted in the year 1972, whereas Rules thereunder, namely, the Haryana Ceiling on Land Holdings Rules were framed in the year 1973 and wanted to know the reasons for delay of one year in framing the rules after the enactment of the Act.

The Department in their written reply stated that—

“The Haryana Ceiling on Land Holdings Act, 1972 came into force in the State with effect from 23rd December, 1972. While giving assent of the President of India on the said Act, the Government of India directed the State Government to amend sections (3)(j) and 5(a) and 32 of the Act as suggested by them. The suggestions were processed and finally an amending bill, the Haryana Ceiling on Land Holdings (Amendment) Bill, 1973 was introduced in the State Vidhan Sabha in March, 1973 and after its having been passed, was sent to the Govt. of India for obtaining the assent of President of India. The President assented to the Bill on 16th July, 1973 and it was notified in the Haryana Government Gazette (extraordinary) dated 24.7.73. The Rules, could be framed only after the said amendment was made. The Rules, namely, the Haryana Ceiling on Land Holdings Rules, 1973, were accordingly framed under the Act and notified in the Gazette vide notification No. GSR 99/HA 26/72/S-31/73 dated 28-8-73. Thus there was no appreciable delay in framing the rules after the amendment of the Act.”

On being enquired by the Committee, the Departmental representative during the Course of oral examination stated that the additional ground for the delay was due to the reasons that the matter regarding the irrigated land/area remained under correspondence with the Irrigation and the Revenue Department. However, he assured the Committee that the Department would minimise this period in future and make every efforts to frame rules within six months after the enactment of the Act, as suggested by the Committee.

Rule 2—

“2. In these rules, unless the context otherwise requires,—

- (i) ‘Act’ means the Haryana Ceiling on Land Holdings Act, 1972;
- (ii) ‘A category land’ means the land under assured irrigation capable of growing at least two crops in an year and irrigated by a canal or state tubewell as mentioned in section 4(1) (a);
- (iii) ‘AA category land’ means the land under assured irrigation capable of growing at least two crops in an year and irrigated by

private tubewells/pumping sets as mentioned in section 4 (1) (a) read with section 4 (5);

- (iv) 'B category land' means that land under assured irrigation capable of growing at least one crop in a year as mentioned in section 4 (1) (b);
- (v) 'C category land' means land of all other types including land under orchard as mentioned in Section 4 (1) (c);
- (vi) 'Form' means a form appended to these rules;
- (vii) 'Section' means a section of the Act;
- (viii) 'Special Collector' means an officer appointed as such by the State Government.

(1) The committee observes that items Nos (ii) and (iii) of rule 2, for the words 'an year' wherever occur, the words 'a year' be substituted.

The Department in their reply admitted these were the printing mistakes and the same will be rectified.

The Committee recommends that an errata to the rules in this behalf be issued.

(2) The committee observed that—

While defining 'C' category land, in item (v) of Rule 2, land under orchard has been included in 'C' Category of Land but when the Committee referred to the definition of orchard under section 3(j) it was noticed that the land under grape garden or vine yard or banana or guava trees was excluded from the definition of "orchard". The Committee wanted to know why the land under these trees had been excluded from the definition of orchard.

The Department in their written replies stated that the land under grape gardens or vine yards, banana orchards or guava trees was not included in the land under orchards on the basis of the national guidelines issued by the Government of India. It is pointed out that in the original definition of orchard appearing in the Act, 1972 only land under grape gardens or vine yard was excluded. However, while conveying assent of the President on the Act, 1972, the Government of India, directed that the land under banana and guava trees should also be excluded from the definition of orchards. Accordingly, the definition of orchard given in section 3 (j) of the Act was amended in the year 1973 by the Haryana Act 33 of 1973 where by the land under banana or guava trees was also included in the definition of orchards.

During the course of oral examination, the Departmental representative stated that the land under banana or guava trees were excluded from the definition of "Orchard" as in Uttar Pradesh and some other States they consider banana or Guava as Agriculture and say as "Kelle Ki Kheti" or "Amrud Ki Kheti". The Committee did not agree to this point of view of the revenue Department as the climate, soil and

circumstances existing in the State of Haryana differ from U.P. and other States. The Committee then enquired the Departmental representative what is the objections, if the land under banana or guava trees be included in the definition of orchard and land under these fruit bearing trees be exempted from the Ceiling prescribed under the Act.

The Departmental representative stated that it was a policy matter and it would be placed before the Government to examine the matter in all its aspect whether it is possible/feasible to include the land under banana or guava trees from the definition of orchard and exempted from the Ceiling Prescribed under the Act and rules.

The Committee recommends that the land exclusively used for banana or guava trees be excluded from the definition of orchard and be exempted from the ceiling under the Act and rules, and the matter be examined thread-bare at the earliest and the Committee informed of the final decision of the Government in the matter.

The Committee wanted to know as to what steps had been taken by the Department to achieve the purposes of the Act/Rules during all these eight years and what targets were still remained to be achieved.

The Revenue Department in their written reply stated that under the Ceiling Act, 23,786 declarations were received from the landowners, out of which 22,115 declarations were decided upto 31-8-80 and as a result thereof, 8761 hectares of land was declared surplus. Besides, 36235 hectares of unutilised surplus area of the old Acts, i.e. the Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Land Act, 1955 was also available for allotment under the Haryana Ceiling on Land Holdings Act 1972. Thus out of 44,996 hectares of surplus land 23,711 hectares of land was not available for allotment due to exemption, inheritance, purchase by tenants and stay orders of the Courts. Only 21,285 hectares of surplus land was actually available for allotment. Out of this 18,462 hectares of Surplus land has been allotted to 17,376 beneficiaries upto 31-8-1980 which included 8709 members of Scheduled Caste to whom 9187 hectares of land was allotted. Physical possession has been delivered to 12329 allottees in respect of 12455 hectares of allotted surplus land. Thus on 1-9-80, 1671 declarations were still to be decided and 2823 hectares of surplus land was yet to be allotted. The physical possession in respect of 6,007 hectares of allotted land was also to be delivered to 5,047 allottees. Efforts to dispose of the available surplus land in accordance with the scheme are being made by the field officers.

During the course of oral examination the Departmental representative further informed that Committee that the position was that the total area under the old and new Act declared surplus was 21,147 hectares as it stood on 31-10-1980 and out of which 19,586 hectares of land has been allotted and out of that allotted land the physical possession of 14,416 hectares was delivered to the beneficiaries and the possession of the remaining land was being delivered at the earliest.

On being asked by the Committee, the Departmental representative stated that the work of delivering the possession of the remaining area:

land would be completed by end of March, 1981 except the cases in which the stay order had been granted by courts.

7 The Committee recommends that the said work be completed by 31st March, 1981 and the Committee be informed thereafter accordingly.

8 (3) The Committee pointed out that at the end of item (viii) of rule 2, the sign and words, "notification" be added so that a "Special Collector" is appointed by notification.

The Departmental representative stated that the present special collector has been appointed by issuing a notification in the Gazette, dated 8.4.80 vide No. 547-AR(5)-80/11646 dated 31.3.80 and necessary action for carrying out the amendment as proposed, being taken by the Department.

9 The Committee recommends that at the end of item (viii) of rule 2, after the words "State Government" the sign and words, "by notification" be added.

Rule 3—

"3. Unless otherwise provided in these rules the prescribed authority shall be—

- | | | | |
|-------|-----|-----|-----|
| (i) | *** | *** | *** |
| (ii) | *** | *** | *** |
| (iii) | ** | ** | ** |

(iv) Any officer not below the rank of An Assistant Collector of the first grade empowered in this behalf by the State Government in respect of any particular area."

(o After discussing the matter with the Departmental representative, the Committee recommends that in item (iv), of rule 3, after the word "empowered" the signs and words, "by notification," be inserted.

Rule 4—

"4. The following relations of the landlord shall not fall under the definition of a tenant namely :—

- (i) children ;
- (ii) father/mother ;
- (iii) sisters of the father/mother and their husbands ;
- (iv) brothers of father/mother and their wives ;
- (v) brothers, their wives and their children ;

(vi) sisters, their husbands and their children ;

(vii) wife, her parents, her brothers and their wives, her sisters and their husbands."

The Committee is of the view that explanation, 1 to section 3 (f) which provides that a married minor daughter shall not be treated as a child of the family for determining the permissible area, should be deleted so as to treat the married minor daughter as a child, as in most of the cases the daughters, who are married are given no benefits in both the families, either in her father's property or in the property of her in-laws and she can get the share in her father-in-law's property only after the death of her father-in-laws and her husband.

In case the aforesaid suggestion is not agreed to by the State Government, the Rule 4 may be amended so as not to exclude the married minor daughter for becoming a tenant of the landlord. She does not remain the member of her father's family after her marriage and she becomes the member of her father-in laws family.

The Departmental representative during the oral examination stated that this is a vital point, involving the policy of the Govt., and legal implication, the Government would like to examine this matter in its substantive aspect.

The final view of the Committee was that such minor married daughter, who has been excluded from the definition of "family", must have share in her father's property till she goes (permanently) into her father-in-law's house.

The Department representative agreed to examine this matter in its all details and let the Committee know of the decision of the Government at the earliest.

Rule 8—

" (1) ***

(2) One copy of the statement in Form IV shall be sent to the landowner, mortgagee with possession, and their tenant by registered post and also the Tehsildar and Collector of the district.

(3) ***

The Committee recommends that in sub-rule (2) of rule 8 after the word "registered post" the words, "with acknowledgement due" be inserted.

Rule 13—

"13 (1) The memorandum of appeal shall be in the form of narrative and it shall set forth, concisely and under distinct

heads, the grounds of objections to the order appealed from and also the relief claimed.

- (2) *** ***
- (3) *** *** ***
- (4) ** * *

The Committee recommends that in sub-rule (1) of rule 13, for the words "shall be in the form of "narrative" the words "shall be in the narrative form" be substituted, and necessary amendment in the rule be made as agreed to by the Department.

Rule 17—

- “17. The Pepsu Tenancy and Agricultural Lands Rules, 1958, the Punjab Security of Land Tenures Rules, 1953 and the Punjab Security of Land Tenures Rules, 1956 as amended from time to time, are hereby repealed in so far as they relate to the matters dealt in these rules and are inconsistent with these rules :

Provided that notwithstanding the repeal of the said rules, anything done or any action taken in the exercise of any power conferred by or under the said rules shall be deemed to have been done or taken in exercise of the powers conferred by or under those rules, as if these rules were in force on the day, on which such thing was done or action was taken."

The Committee recommends that in rule 17, for the words "matters dealt in these rules", the words "matters dealt with in these rules", be substituted and necessary amendment be made in the rule, as agreed to by the Department.

THE HARYANA UTILISATION OF SURPLUS AND OTHER AREAS SCHEME, 1976.

Rule 7—

The allotment authority shall make allotment first of all the surplus area and the tenants' permissible area deemed to have Vested in the State. Government under sub-section (3) of section 12 and thereafter the surplus area acquired from time to time under sub-section (1) of section 12, in each village in favour of eligible persons after observing the following principles and procedure namely :—

- (i) inter se priority amongst the eligible Categories shall be in the same order in which these have been listed in paragraph 4, that is Category A will take precedence over Category C and Category B will take precedence over Category "C", Category "B" and so on ;

The Committee observed that in paragraph 7 (i) for the words "Category B will take precedence over Category C and so on",

substitute the words "Category B will take precedence over Category BB and Category BB will take precedence over Category C and so on.

The Department agreed with this suggestion of the Committee and promised to amend the Scheme accordingly.

The Committee recommends that this rule/Scheme be amended accordingly and the Committee be informed at the earliest.

Cooperation

**2. THE PUNJAB COOPERATIVE SOCIETIES RULES, 1963,
FRAMED UNDER THE PUNJAB COOPERTIVE SOCIETIES
ACT, 1961**

General

1. The Committee, after going through the Punjab Co-operative Societies Act, 1961, and the rules framed thereunder observed that the Act and the rules, had been amended several times. The Committee is of the view that the Act be enacted afresh so as to suit the present set up of the Cooperative system in the State and the rules should also be made afresh in the light of the Act, so enacted, and the Act and rules in amended upto-date form be made available to the Committee and the general public.

2. The Committee observes that generally the public faces great difficulty in the registration of a Society and then in getting the loans for that society. In order to obviate this difficulty the Committee suggests that the maximum number of Co-operative Societies be allowed to be registered with least objections for the development cooperation movement.

3. The Committee found that no exemption from attachment and sale of immovable property of an agriculturist had been given in the Punjab Cooperation Societies Rules, 1963. Clause (b) of Section 60 of C.P. C, 1908 provides.

“houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him.”

1 The Committee felt that this clause (c) should be incorporated in the shape of rules under these rules also so as to grant exemption to an immovable property and the land of an agriculturist, in accordance with section 60 ibid.

During the course of oral examination the Departmental representative stated that the Government was going to set up a Committee which would examine these valuable observations/recommendation made or others to be made by the Committee and amend the Act and rules accordingly.

Rule 5

“5 Procedure on receipt of application—(1) Before passing final orders under section 8, the Registrar may call for such further information from the applicants or make such independent enquiries as he may deem necessary.

(2) After the Registrar is satisfied with regard to the matter stated in sub-section (1) of section 8, he may register the co-operative Society and its bye-laws. A copy of the registered bye-laws shall be returned by him to the co-operative Society”.

Rule 7

"7 Appeal against refusal of registration.-Where an application for registration of a co-operative society is rejected by the Registrar the appeal, if made, shall be signed by the persons joining in the application for registration."

Rule 13

"13. Appeal against refusal to register amendments to bye-laws.-Where an application for registration of an amendment in bye-laws of a co-operative society is rejected by the Registrar under sub-section (4) of Section 10, the appeal, if any, shall be made only after a meeting of the general body has reconsidered the matter and has decided to prefer an appeal and shall be signed by an officer of the co-operative society duly authorised in this behalf by a general meeting."

The Committee observes that where an application for registration of a cooperative society under rule 5 is rejected, the applicant may be provided a reasonable opportunity of being heard in person or through his duly authorised representatives. 2

Similarly, in the case of an appeal filed against the order of rejection under Rule 7 the appellant may also be afforded an opportunity to be heard in person. 3

The Committee further desired to know when an appeal against refusal to register amendment to bye-laws is made, whether any opportunity is given to an appellant to be heard personally. 4

As regards the affording of reasonable opportunity to be heard to the applicant before rejecting his application for registration, the Departmental representative stated that it would become difficult for the Registrar to dispose of the application within the stipulated period of two months, as stated in section 8(3) of the Act and promised to make such a provision to be heard to an appellant in the case of appeal

The Committee recommends that suitable provisions in the rules may be made so that an opportunity be afforded at least to an appellant to be heard personally. 5

Rule 14.

"14. Disqualification for membership :—(1) No person shall be eligible for admission as a member of a Co-operative society, if he :—

- (a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or
- (b) he has been sentenced for offence other than an offence of a political character or an offences not involving

moral turpitude, and a period of five years has not elapsed from the date of the sentence.

- (2) If members become subject to any of the disqualification specified in sub-rule (1), he shall be deemed to have ceased to be member from the date when the disqualification was incurred.

The Committee was of the view that the offences involving "political character" and "moral turpitude" as disqualification for being eligible for admission as a member of a cooperative Society, should be defined.

The Departmental representative stated during the course of oral examination that the terms "political character" and "involving moral turpitude" could not be conclusively defined and made exhaustive and as such the Department felt that the proposed amendment, if made, might not serve the desired purpose.

The Committee is of the view that if it is not possible to define the term "moral turpitude", it would be better to delete the offences involving "Political Character", which are superfluous.

Rule 15.

- **15.** Prohibition of membership in two Cooperative Credit and Service Societies:—(1) No individual being a member of a primary co-operative society having one of the operation of the funds to be lent to its members shall be a member of any other such co-operative society without the general or special permission of the Registrar, and when an individual has become a member of two such co-operative societies either or both of the co-operative societies shall be bound to remove him from the membership upon a written requisition from the Registrar to that effect.

- (2) No individual who is an officer of any cooperative society shall without the general or special permission of the Registrar, be a member of any other co-operative society whose objects are similar to the objects of the society of which he is an officer; and where such an individual has become a member of another society with similar objects either or both of the co-operative Societies shall be bound to remove him from membership upon written requisition from the Registrar to this effect. If any question arises as to whether or not two societies have similar objects the decision of the Registrar on the point shall be final.

The Committee was of the view that rule 15(1) envisaged that an individual could not remain a member of two primary societies with similar objects unless he had obtained general or special permission of the Registrar. It is generally observed that an individual remained member of two or more cooperative societies with similar

objects without even seeking general or special permission of the Registrar. If the Registrar failed to take action in such cases or his subordinate did not bring to his notice such cases what would be the legal position of that member in respect of these societies so far his membership was concerned. Under those circumstances he could be removed from the membership of the Society, and from which society?

The department was of the view that the rule should be amended providing for a declaration to be obtained from all persons seeking membership in the co-operative societies to the effect that the person concerned was not a member of any other co-operative society of a similar purpose. Such a provision would enable the department to launch suitable prosecution. The delinquent members shall be removed from the membership of the former society whenever such a fact comes to the notice of the Registrar. A provision shall also be made in the rules at the time of amendment that such a delinquent member should also be suspended from the membership of all such societies till the final decision.

The Committee agrees with the said view of the department and recommends that rule 15 be amended accordingly.

Rule 20

"20. Maintenance of register of members :—Every Co-operative Society maintain a register of members showing :—

- (a) the name, address and occupation of each member, and a statement of shares held by him;
- (b) the date on which the member's name was entered in the register;
- (c) the date on which any person ceased to be a member;
- (d) the nominee appointed by a member".

The Committee was of the view that sub-section (2)(xvi) of section 85 of Act provided for the formation and maintenance of a register of members, and where the liability of the Members is limited by shares, of a register of shares, but, actually rule 20 of these rules stipulates the maintenance of a register of members only.

The Committee, therefore, desired the Department to clarify the position in this regard.

The Department in its written reply stated that the purposed amendment for the formation and maintenance of register of members and where the liability of the member is limited by shares, of register of shares, would be made.

The Committee recommends that rule 20 should be amended accordingly.

Rule 22

"22. Powers of general meeting :—Without prejudice to the provisions of section 24, the general meeting alone shall have the power to transact the following business ;

(a) fixing the maximum credit limit of the cooperative society (having 1000 or less members) subject to the approval of Registrar, provided that no approval of the Registrar shall be necessary in case of Primary Agricultural Service society.

(b) ** ** *

(c) expulsion of the members

The Committee observed that according to old sub-rule 22(a), the General Meeting alone had the power to the maximum credit limit of the cooperative society subject to the approval of the Registrar in accordance with the newly substituted sub-rule 22(a) the General meeting has the power to fix the maximum credit limit of cooperative society having 1000/- or less members, subject to the approval of the Registrar. The Committee, therefore, desired to know the reasons from the Department for amending the sub-rule.

The Departmental representative stated that it was superfluous and would be omitted. The Committee recommends that rule 22 be amended accordingly.

Rule 25

"25. Disqualification for membership of committee :—No person shall be eligible for election as a member of the committee if :—

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) he has during a period of 12 months preceding the date of filling of nomination papers, remained inactive as member or has been carrying on, through agencies other than the Co-operative Society of which he is a member the same business as is being carried on by the Co-operative Society;

(g) * * *

(gg) * * *

After discussion and having been agreed to by the Departmental representative, the committee observes that in clause (f), for the words "remained inactive as member", the words "made no transaction with society as a member in accordance with its objects and as stated in the Bye-laws of the society." be substituted.

During the course of oral examination the Department agreed that for words "remain inactive as members the words "made no transaction with the society as a member in accordance with its objects and as stated in the bye-laws of the society" would be substituted.

The Committee recommends that the rule 25 be amended accordingly. //

Rule 26

"26. Cessation of membership of Committee :—A member of committee shall cease to hold his office as such if he :—

- (a) continuous to be in default in respect of any sum due from him to the Co-operative Society for such period as may be laid down in the by laws;
- (b) ceases to be a member;
- (c) is declared insolvent;
- (d) becomes of unsound mind;
- (e) is convicted of an offence involving dishonesty or moral turpitude; or
- (f) becomes subject to any disqualification which would have prevented from seeking election, had he incurred that disqualification before election".

After going through the provisions of rule 25 and 26, the Committee was doubtful if there is any provision in the rules or the Act itself to remove a person, who escaped from being disqualified on the date of his election to the Committee due to one reason or the other, from the membership of the Committee.

The Departmental representative during the course of oral examination stated that a new sub-rule 26 (g) may be added as follows :—

"26 (g) was subject to any disqualification which would have prevented him from seeking election if that disqualification had come to the notice before he was elected."

The Committee, therefore, recommends that necessary amendments in the rules be made as early as possible. 12

Rule 28

"28. Employees of Co-operative Societies :—(1) No Co-operative Society shall appoint any person as its employee unless he

possesses such qualifications and furnishes such security as may be specified by the Registrar from time to time:

- (2) The Registrar may in case, for special reasons relax the provisions of this rule to such extent as he may consider proper".

13 The Committee notes that under section 85(2) (xxxviii) the Govt. is required to prescribe qualifications of the members of the Committee in addition to that of the employees of the society. Under Rule 28(1) the Registrar has been empowered only to prescribe qualifications and the amount of security required from the employees of the society. The Committee desired to know the reasons for not prescribing the qualifications of the members of the Committee of the society.

The Departmental representative stated that instead of prescribing these qualifications in the bye-laws, these should be prescribed in the rules to enable a person to become a member of the Committee of the society.

The Departmental representative further stated that a Govt. servant may be debarred from seeking election to the managing Committee of the Cooperative Society, by suitably amending the rules.

14 The Committee further noted that in sub-rule (2) of the rule 28, the Registrar had been given the powers to relax the provisions contained in sub-rule (1) of rule 28 for special reasons. In the view of the Committee, these powers appear to be arbitrary and in a number of cases, the High Court had struck down such rules. The High Court was reported to have observed that relaxation can be only for a class or category of persons and not for any individual. The Committee, therefore, desired that the Department should clarify this position.

The Departmental representative noted this observation of the Committee and promised to re-examine it:

Rule 55

"55. Hearing of dispute :—The Registrar or the arbitrator as the case may be, shall hear the parties and witnesses who attend. On the basis of such evidence and after consideration of any documentary evidence that may be produced by either party, he shall give a decision or award, as the case may be, in accordance with justice, equity and good conscience. The decision or award shall be reduced to writing, announced to the parties and filed in the office of the Registrar. In the absence of any party duly summoned to attend the dispute may be decided ex-parte".

The Committee observed that under C.P.C. if the proceeding was decided ex-parte there was provision for setting aside the ex-parte order or decree on sufficient grounds. Similar provision, in view of the Committee was required to be made in rule 55.

The department felt that after the adding of proposed provision in the rule, new difficulties and problems would crop up resulting in unnecessary delay in the disposal of cases. In view of the fact that remedy was open to the aggrieved party by way of appeal, the Department was of the view that the existing provision be allowed to continue.

The Committee, after perusal of the reply of the department regarding observation made in regard to Rule 55, observes that a provision should be made in the rule to set aside the ex-parte proceedings as laid down in C.P.C. 15

Rule 58

"58. Procedure to be followed by liquidators :—(1) The liquidator shall as soon as the order of winding up of the co-operative society taken affect publish by such means as may think proper, a notice requiring all claims against the co-operative society, the winding up of which has been ordered to be submitted to him within one month of the publication of the notice. All liabilities recorded in the account books of a co-operative society shall be deemed ipso facto to have been duly submitted to him under this sub-rule.

(2) * * *

(3) * * *

The committee reiterates its earlier observations that the mode of publication of the notice under rule 58 should necessarily be prescribed in the rules.

The Committee further observes that in line 5 of Rule 58, for the word "taken" the word "take" be substituted. 16

Rule 67

"67. Removal of liquidators :—A liquidator may at any time, be removed by the Registrar and he shall on such removal hand over all the property and documents relating to the society under liquidation to such persons as the Registrar may direct."

The Committee recommends that in Rule 67, after the words "by the Registrar" the words "after reasons to be recorded" be added, to which the Department agreed to amend the rule accordingly. 17

Rule 72

"72 (1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) In the seizure and sale of movable property, the following procedure shall be observed :—

(a) The sale officer shall after giving previous notice to the decree-holder, proceed to the village or locality where the defaulter resides of the property to be distrained is situated and serve a demand notice to the defaulter if he is present. If the amount due together with expenses is not at once paid. Sale Officer shall make the distress and shall immediately deliver to the defaulter a list or inventory of the property distrained and an intimation of the place and day and hour at which the detained property will be brought to sale if the amounts, due are not previous discharged. If the defaulter is absent, the Sale Officer shall serve the demand notice on some adult member of his family or on his authorised agent or when such service cannot be affected, shall affix a copy of the demand notice on some conspicuous part of residence. He shall then proceed to make the distress and shall fix the list of property attached on the usual place of residence of the defaulter endorsing thereon the place where the property attached on the usual place of residence of the defaulter endorsing thereon the place where the property may be lodged or kept and an intimation of the place, day and hours of sale.

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(h) Where the Sale Officer may have reason to suppose that the property of a defaulter is lodged within a dwelling house the outdoor of which may be shut or within any apartments appropriated to women, by custom or usage are considered private, the Sale Officer shall represent the fact to the Officer Incharge of the nearest Police Station. On such representation, the officer incharge of the said station shall send a police officer to the spot in the presence of whom the Sale Officer may force open the other door of such dwelling house in like manner as he may break open the door of any room within the house except the Zanana. The Sale Officer may also in the presence of the police officer, after due notice is given for the removal of women within a Zanana and after furnishing means for their removal in a suitable manner if they be women of rank, who according to the custom or usage cannot appear in

public, enter the zanana apartments for the purpose of distraining the defaulters' property, if any deposited there in, but such property, if found, shall be immediately removed from such apartment, after which they shall left free to the formers occupants".

The Committee recommends that in sub-rule 5 (a), after the words "Part of residence" the words "in the presence of two persons of the locality" be inserted.

18

The Committee further recommends that in sub-rule 5 (h), line 2, for the word "suppose" the word "believe" be substituted. In sub-rule 5 (h), the word "other" be deleted.

19

Rule 75

"75. Appeals for the purposes of the section 68, on appeal shall be entertained unless it is accompanied by a copy of the order appealed against".

The Committee recommends that in Rule 75 for the word "on" the word "no" be substituted.

20

APPENDIX "B"

The Committee recommends that in Appendix "B" para 8 after the word "cooperative" the word "society" be inserted.

21

The Committee further recommends that in Appendix "B" para 9 after the words "signatories of the requisition", and before the word "summon" for the word "may" the word "shall" be substituted.

22

Excise Taxation

3. THE HARYANA GENERAL SALES TAX RULES, 1975, FRAMED UNDER THE HARYANA GENERAL SALES TAX ACT, 1973.

GENERAL

While going through the relevant provision of the Haryana General Sales Tax Act and Rules, the Committee observed that the Haryana General Sales Tax Act was enacted in the year 1973 and the Haryana General Sales Tax Rules thereunder were framed in the year, 1975, and the Committee wanted to know the reasons for delay of such a long time of two years in framing the said Rules.

The Department in their written reply stated that the Haryana General Sales Tax Act, 1973, was enforced with effect from 5-5-73. Section 64 of the Act empowers the State Government, subject to previous publication, to make rules for carrying out the purposes of this Act. A draft of rules for previous publication in the Government Gazette was received from the Excise and Taxation Commissioner, Haryana on 20-5-73. The draft rules remained under scrutiny with the Govt. After making thorough examination of the draft rules by the Govt. which took a lot of time, the same were published in the Govt. Gazette on 28-5-74. While publishing the draft rules suggestions/objections were also invited from the affected persons. A large number of suggestions/objections were received by the Govt., and the comments of the E.T.C. were called for on the objections/suggestions. It took the E.T.C. considerable time to examine the various suggestions and for this he held a number of meetings and then sent the final draft of the rules to the Government in December, 1974. Thereafter, the Govt. examined the suggestions/objections as received from the public and also the Draft rules received from the E.T.C. The draft rules were finally sent to the Law Department for vetting whereafter these rules were sent to the Finance Department and Counsel of Ministers for their approval. The Rules were again sent to Law Department for publication in the Government Gazette and the needful was done on 25-11-1975. It would thus be seen from the above that the delay which had occurred was due to the lengthy procedure which had to be followed as per legal requirements.

During the course of oral examination the departmental representative stated that the legal requirements were such that took time in framing the draft Rules and the objections had to be invited from the general public and then the objections had to be considered. After considering the objections and consulting the Law Department the rules were finally published in the official Gazette and in this case the draft rules were published in the official Gazette on 28-5-74. The Committee observes that in future rules should ordinarily be framed as early as possible after the enactment of the Act and in no case this period should exceed six months. However, the Departmental representative assured the Committee that the Department would minimise the period in future and make every efforts to make rules within the stipulated period of six months, after the enactment of the Act, as suggested by the Committee.

The Committee also observed that the Department had supplied the Committee the copies of the Haryana General Sales Tax Rules, 1975, which contained large number of printing mistakes and did not seem to be amended up-to-date. The Department in their written reply stated as the copies of the Haryana General Sales Tax Rules, 1975, printed by the Government at the time of enforcement of the said Rules, were supplied to the District officers for use by the assessing authorities members of Taxation inspectorate staff and other concerned at the head office. Thereafter the copies of the Haryana General Sales Tax Rules, were not got reprinted. As such 25 copies of these rules were not available in the office and were thus purchased from the market. The copies of the amendment in the rules, issued after the publication of Haryana General Sales Tax Rules (the copies of which were supplied to the Committee) were got cyclostyled and attached to each copy so as to make them up-to-date.

The committee observed that firstly the copies of the rules supplied to the Committee contained a large number of mistakes, and, secondly these were private publication. The Departmental representative stated during the course of oral examination that as the officially published copies of the rules were not available, the Committee had to be supplied the copies of the rules as privately published after incorporating therein the amendments made from time to time. The Committee observed that the officially printed copies of the rules were not made available to the committee, then how those could be available to the general public.

The Committee recommends that these rules should (officially) be republished after incorporating all the amendments made from time to time. The Departmental representative agreed to get the rules so republished within three months under intimation to the committee.

Form appended to the Rules

The Committee observed that the various forms appended to the rules are not available to the general public at tehsil, sub-division and district headquarter.

The Department in their written reply stated that there are two types of forms prescribed under the Haryana General Sales Tax Rules, 1975. The declarations/certificates in form S.T. 13, S.T. 14 and S.T. 15 are priced forms. These have been got printed and are easily available to the needy dealers at the counters in the district offices. To avoid harassment, it is also provided in the Act/Rules that the dealers could also get them printed at their own level in the prescribed form and put into use after authentication by the concerned assessing authority. Now alternatives in the form of carbon copy of cash memo. or sale bill or the list of sales, duly authenticated by the purchasing dealer and the prescribed declaration appended thereon, to these declarations/certificates in form S.T. 13, S. T. 14 & S.T. 15, have also been provided for simplifying the present sales tax procedure.

The Departmental representative further stated that various forms which are not priced one as prescribed under the Rules are got printed

annually according to the annual requirement of each district through the Controller of Printing and Stationery, Haryana, Chandigarh, and are supplied to them for use regularly. In the districts where scarcity of such forms is felt, these are made available from the district where these are reported in surplus. The dealers are also at liberty to get such form printed themselves in the prescribed form and then put to them in use without their authentication. By and large there is no shortage of such forms and these are readily available to the needy persons.

6 The Committee recommends that all the forms appended to the rules, which are of daily use, be got printed/cyclostyled and authenticated copies thereof made available for sale at reasonable price to the public in general at the tehsil, sub-division and district headquarters.

Rule 9

"9. Award of cost by tribunal (Section 4 (9).—The Cost of all appeals or applications before the Tribunal shall be in the discretion of the Tribunal."

7 The Committee observed that the Tribunal had been given unbridled discretion under Rule 9 to award the cost of all appeals and applications before the Tribunal without imposing any conditions and limitations as envisaged under section 9 of the Act. The Committee enquired whether rule 9 was ultra vires of section 4 of the Act and it was desirable to impose such restrictions and conditions, as laid down in section 4 (9) *ibid*.

The Department in their written reply stated that the objections raised by the Committee was reasonable and they would examine the issue for suitable change or amendment in the existing Rule.

4 During the course of oral examinations, the Departmental representative assured the Committee that after examining the issue for suitable change or amendment in the existing Rule, the needful would be done within three months. The Committee recommends that suitable amendment in the rule be made within the period of three months and the Committee be informed accordingly.

Declaration of head office by dealers submission of returns

Rule 16

"16 (1) Where a dealer has within the State more than one place of business (hereinafter referred to as the branches) he shall declare one of such branches as the head office of the business for the purpose of this Rule and shall intimate the same to all the assessing authority, within whose jurisdiction such branches are situated together with the situation thereof before the close of any year in which business is done in one or more of such branches.

(2)*

*

*

*

(3)*	*	*	*
(4)*	*	*	*
(5)*	*	*	*
(6)	*	*	*
(a)*	*	*	*
(b)*	*	*	*
(c)*	*	*	*
(7)*	*	*	**

The Committee observes that where a dealer has within the State more than one place of business, branches, he shall declare one of such branches as the head office of the business for the purpose, and, therefore, it is in the discretion of the dealer to declare any office/branch as its head office i.e. some factories are set up at Faridabad and the dealers have got them registered at Delhi. The Committee feels that the head office in such like cases be placed at one place within the State where the factory is situated.

The Department in their written reply stated that the discretion of disclosing any of the branch office as head office must essentially remain with the concerned dealer/who will declare a particular branch as his head office according to his own convenience. If any provision is made in the Act or the rules that the head office will be at the place in the State where the factors is situated and if similar provisions are made in the Sales Tax Act and the Rules of other States or in other Central Revenue Acts like Income Tax Act or Central Excise Act, then the dealer apparently would find himself in an impossible situation.

In view of the practical consideration, therefore, it is felt that the discretion in declaring a particular branch office as head office should continue to remain with the dealer himself, as already provided in Rule 16. It may further be pointed out that Rule 16 deals with a contingency where a dealer has got two or more branch offices in the State of Haryana itself and in such a contingency rule 16 provides that the dealer shall declare one of the places of business as his Head office. In the observations made by the Committee the contingency which is referred to is the one in which one of the business premises is in Haryana and the other business premises is outside the State. These observations, therefore, do not seem to fall in the ambit of Rule 16. If the Committee, however, desires that in the presence of two or more branches of the concern in Haryana the Head Office should compulsorily be declared at the place where the factory is situated that may also create difficulties for the dealers in case they have factory at one place and sale office at another. In such cases normally the Head Office is declared at the place where the sale office is maintained by the dealers. Any compulsion in this behalf would neither be relished by the dealer nor would be useful for the department, as the later would at any given time would be more concerned with the accounts relating to sales

then the accounts relating to productions. Further rule 16 covers not only the manufacturing concerns but also trading concerns.

The Committee, after orally examining the departmental representative, recommends that the Department should re-examine the matter thoroughly so as to provide that where a dealer has several branches he is to declare the head office at the place within the State where the factory is situated, in the interest of the State.

4. THE HARYANA HOME GUARD RULES, 1980, FRAMED UNDER THE HARYANA HOME GUARDS ACT, 1974

Rule 1

"1. (1) These rules may be called the Haryana Home Guards Rules, 1980.

(2) These shall apply only to the part-time employees".

- (a) The Committee observed that the Haryana Home Guards Act was enacted by the State Legislature in the year 1974 and the rules thereunder the title "Haryana Home Guards Rules" were framed in the year 1980, and wanted to know the reasons for the time lag of six years in framing the rules.

During the course of oral examination the Departmental representative in reply stated that the Haryana Home Guards Act, 1974, was published in the Haryana Government Gazette dated 9th September, 1974. Soon after the receipt of the draft rules from the department in 1976 necessary action to finalise these rules was initiated by Government, as per procedure of the Govt., these draft rules were sent to Chief Secretary/S.S.S. Board/F.D. for scrutiny and comments. In addition to this, these rules were also got examined by the legal experts. This was necessitated on account of the reason that these rules were unique in their nature in that certain provisions therein had to be made keeping in view the different type of services covered by these rules. The above authorities suggested various amendments in these rules and desired that revised draft rules may be sent to them for final approval. It took considerable time to meet with the legal objections raised by the above authorities. Hence the delay in publishing these rules.

The Committee observes that the reasons for delay in framing the rules are not convincing and the draft rules were made shuttle cock between the Home Department and other Government Departments i.e. Chief Secretary/S.S.S. Board/F.D. and Law Department, and Government took long time of six years in framing the rules. The committee recommends that in future rules should be framed as early as possible within six months of the enactment of the Act to carry out the purposes of Act/Rules/Law.

- (b) As regards sub-rule (2) of rule 1, the Committee wanted to know whether any rules had been framed for whole time/regular employees of the Home Guards.

The Committee was supplied the copies of Home Guards and Civil Defence Services (State Service Group A and B) and stated that the service rules of Group C employees of the Home

Guards were under preparation. The committee recommends that the Service Rules of Group C employees, (non-gazetted) of the Home Guards be prepared and finalized/published at the earliest possible.

- (c) The Committee at its meeting held on the 27th November, 1980 observed that the Haryana Home Guards Rules were framed vide notification dated 6th May, 1980 and these were not laid on the Table of the House during its July Session (8th July to 12th July, 1980) i.e. soon after these rules were made as required under section 11 of the Act, and, therefore, the Committee would like to know the reasons thereof and desired that the responsibility may be fixed for this lapse on the part of the Government officer/official and these rules may now be laid on the Table of the House during its next Session.

During the course of oral examination the Departmental representative stated that the Haryana Home Guards Rules, 1980 were published in the Haryana Govt. Gazette on 13th May, 1980. These could not be laid on the table of the House mainly for the reason that there was a strike by the employees of the U.T. Press at that time. Only 100 copies of the rules were received from the U.T. Press and that in October, 1980.

The Committee observed that the cyclostyled copies of the rules could be laid on the Table of the House in July Session or at the Latest in December Session, 1980. However, the Committee recommends that the said rules be laid before the State Legislature during its March Session, 1981.

Rule 7

"7 (1) * * * *

- (2) No person shall be enlisted as a member, unless he produces a certificate of character from the principal academic officer of his university, college, school or institution last attended, if any, and similar certificates from two other responsible persons, not being his relatives who are well acquainted with him in his private life and are unconnected with his university, college, school or institution".

The Committee recommends that in line 4 of sub-rule 2 of Rule 7, after the word "certificates", the following words shall be inserted :—

"from the Head of the Department/Institution in which he is whole time employed".

Rule 14

- "14. The pay, allowances and amenities, if any, admissible to the members, including Gazetted and Non-gazetted officers shall be such as may be determined by the Government, from time to time".

The Committee wanted to know the exact constitution/structure of Home Guards Force and the distinction between Honorary Gazetted Officers, including Gazetted and Non-gazetted Officers.

The Departmental representative during the course of oral examination stated that in view of the observation of the Committee amendment to delete this rule was being taken.

The Committee recommends that this rule should be deleted from the rules as it is unnecessary.

Rule 19

The Committee observed that in rule 19, the spellings of the following words seemed to be incorrect and desired that the same be corrected by the department.

'Celluler'

'Treusers'

'Balt' and

'Lenyard'

The Departmental representative agreed to correct the same in the copies of the rules to be reprinted/republished.

Rule 20

- | | | | | | |
|------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|----|
| "20. | (1) | * | * | * | * |
| | (2) | * | * | * | * |
| | (3) | * | * | * | * |
| | (4) | * | * | * | * |
| | (5) | The members shall be liable to serve at any place within the State of Haryana. In emergency, those members who volunteers, may however, be deputed for special outside the State. | | | |
| | (6) | * | * | * | ** |

The Committee observed that in sub-rule (5) of rule 20, after the word 'special', the word "duty" seemed to be missing, which the Departmental representative agreed to insert the same.

Rule 24

"24. The following officers shall have the authourity of calling out members within their jurisdiction for duty ; —

- (a) The Commandant General or any other officer authorised by him in this behalf ..For any period
- (b) District Magistrate ..For any period
- (c) The District Commandant ..For fifteen days
- (d) The Superintendent of Police ..For fifteen days
- (e) The Police Officer not below the rank of Station House Officer or Border Picket Commandant in cases of emergency only, for a period not exceeding ten days at a time

Provided that in the case of officers specified in clause (e) a report of the action taken with reasons thereof shall be made immediately by the officer concerned to the Superintendent of Police and the District Commandant, as the case may be".

The Committee observed that in clause (e) of Rule 24, the words "for a period not exceeding ten days at a time", should appear in front of clause (e) as in the case of other clauses, to which the Departmental representative agreed to amend the rule.

Rule 27

"27. (1) The members shall be eligible for cash awards individually or collectively for conspicuous good work or for a work of outstanding nature in saving life, protection of property, assistance in maintenance of law and order, devotion to duty and for any other purpose which furthers the aims and objects of the Home Guards.

(2) The Commandant General is authorised to grant awards upto a monetary limit of two hundred and fifty rupees in any one case or on any one occasion.

(3) The complete citation indicating the reason for which the award is granted shall be written and duly publicised".

The Committee suggested that in sub-rule (2) of rule 27, for the words "two hundred and fifty" the words "five hundred" be substituted. The Departmental representative during the course of oral examination stated that the Department would give due weight of this proposal of the Committee in consultation with the State Finance Department as it involved financial implication, to which the Committee agreed.

The Committee recommends that all these recommendations of the Committee be incorporated in the rules and the rules be republished after carrying out all the amendments/ proposals suggested by the Committee and the Committee be informed accordingly.

Animal Industry

5. THE HARYANA PROHIBITION OF COW SLAUGHTER RULES, 1972, FRAMED UNDER THE PUNJAB PROHIBITION OF COW SLAUGHTER ACT, 1955

The Committee observed that the Punjab Prohibition of Cow Slaughter Act was enacted and came into force in the year 1955 and the Haryana Prohibition of Cow Slaughter Rules thereunder were framed in the year 1972. The Committee would like to know the reasons for this time lag of 17 years in framing the rules and particularly by the State of Haryana since 1.11.1966 upto 5th May, 1972 and how in the absence of the rules, the purposes of the Act were carried out?

The Departmental representative during the course of oral examination stated that the Department could not find out the reasons for not framing the rules by the erstwhile State of Punjab before 1.11.1966 and the Haryana Government did not feel the necessity of framing the rules in the Haryana State until 1972.

The Committee regrets to note that the Department took such a long time in framing the Rules, resulting in that the purposes of the Act were not fully carried out during the intervening period and recommends that in future, rules should be framed within a period of six months of the enactment of the Act.

Rule 2

"2. In these rules, unless there is any thing repugnant in the subject or context,—

- | | | | | |
|-----|---|---|---|---|
| (a) | * | * | * | * |
| (b) | * | * | * | * |
| (c) | * | * | * | * |
| (d) | * | * | * | * |
| (e) | * | * | * | * |

(f) "Local authority" includes Gram Panchayat/Panchayat Samiti, Municipal Committee, Notified Area Committee and Contonment Board, and

- | | | | | |
|-----|---|---|---|---|
| (e) | * | * | * | * |
|-----|---|---|---|---|

The Committee recommends that in Clause (f), the words "Notified Area Committee" occurring after the words "Municipal Committee", be deleted as no Notified Area Committee exists in the Haryana State at present.

Rule 10

"10. The Government Gosadans, Khel District Gurgaon and Mandewala District Ambala already set up in Haryana State will take up the fuctions of reception, maintenance and care of uneconomic ccws sent to these institutions

by the individual or private farms or others. These shall be charged a reception fee of Rs. 20 per cow from all persons”.

The Committee observed that in Rule 10, the Government authorised only the following two Gosadans for receptions, maintenance and care of uneconomic cows whereas there were several Gosadans in the State, which required such authorisations:—

1. Govt. Gosadan, Khol, Distt. Mohindergarh.
2. Govt. Gosadan, Mandewala, District Ambala.

The Committee was of the view that if the Government had to give some extra grant for the purpose, the Government should take necessary steps to give such extra grants atleast to one Gosadan in each district so that the owners of the uneconomic cows could admit their cows in such Gosadans.

The Departmental representative during the course of oral examination stated that the matter regarding keeping uneconomic cattle in each district and giving them extra grant was under examination of the Government.

The Committee recommends that the proposal regarding keeping un-economic cattle in each district and giving them extra grant should be expedited and the necessary provision be made in the rules to preserve the life stock in the State.

Rule 11.

“11. (1) Subject to the provisions hereinafter contained, licence shall remain in force up to the end of the year in which it is granted or renewed.

(2) * * * *

The Committee observes that in sub-rule (1), for the word “up” occurring after the word “in force” the words “upto” be substituted.

The Committee observes that in form “A” for the word “over” occurring before the words “the age” the word “above” be substituted so as to read above the age of 15 years.

The Committee enquired whether the Government has revised/amended the Rules in question in the light of the Punjab Prohibition of Cow Slaughter (Haryana Amendment) Act, 1980, passed by the State Legislature sometime in March, 1980.

The Departmental representative in reply stated that the Government had issued the notification, amending the said Rules in the light of the said enactment of the State Legislature about seven months back and promised to supply the copies of the Rules/notification, as amended, to the Committee, in due course of time.

The Committee recommends that the Rules as amended upto-date incorporating the amendments made by the said notification and in the light of the said recommendation of the Committee, be republished for the better administration of the law on the subject.

8

6. THE HARYANA PRIVATE COLLEGES (TAKING OVER OF MANAGEMENT) RULES, 1980, FRAMED UNDER THE HARYANA PRIVATE COLLEGES (TAKING OVER OF MANAGEMENT) ACT, 1978.

The Committee observed that the Haryana Private Colleges (Taking over of Management) Act, 1978, was enacted and Published in the Haryana Government Gazette on the 4th November, 1978, and the Haryana Private Colleges (Taking over of Management) Rules, 1980, were framed and published in the Gazette dated 26th February, 1980, and wanted to know from the Education Department the reasons of delay of one year and three months in framing the rules under the Act.

The Department in their written reply stated that the said Act and Rules came into force on 17.11.78 and 17.7.80 respectively and further stated that the delay in framing the said Rules were due to the reasons that the rules were to be approved by the Council of Ministers and then these had to be vetted by the Law Department-

The Committee observed that the Education Department has taken one year and three months in framing the said Rules and recommend that in future rules should ordinarily be framed as early as possible after the enactment of the Act and in no case this period should exceed six months. If no rules are framed within the stipulated period of six months, the Department concerned should invariably bring in each case this fact to the notice of the Committee stating the reasons to the satisfaction of the Committee for not framing the rules within the stipulated period.

Rule 3

"3(1)	***	***	***
(2)	***	***	***
(3)	***	***	***

- (4) If, at any time before or on the expiry of the period for which the Management of the College is taken over, the Government decides to hand over the management along-with the College property to the duly constituted managing committee of the college, a notice of this effect shall be duly served on the managing committee/president of the college informing it/him of the proposed action".

The Committee observed that in sub-rule (4) of rule 3, line 5, for the word "of" occurring after the words "a notice" the word "to" be substituted.

The Departmental representative agreed to this proposal of the Committee for issuing the corrigendum.

The Committee observe that the rules be revised from time to time and such minor printing error be corrected at the proof stage

The Committee, while inviting the attention of the Education Department to the following section 10 of the Act wanted to know the reasons for the delay in laying the rules before the State Legislature—

Section 10 of the Act :

- “10(1) The State Government may, by notification in the Gazette make rules for carrying out the provision of this Act.”
- (2) Every rule made under this section shall be laid, as soon as may be after it is made, before the House of the State Legislature while it is in Session for a total period of ten days which may be comprised in one Session or in two or more successive Sessions, and before the expiry of the Session in which it is so laid or the Session immediately following, the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

The Departmental representative stated that rule 1(2) provides that these rules shall come into force on such date as the State Government may, by notification, appoint and accordingly the Government notified on the 17th July, 1980 as the date on which these rules came into force and further stated that the rules thereafter could be laid before the Legislature in its December Session, 1980.

9 The Committee do not subscribe to this view of the Department. The rules could be laid before the Legislature, as soon as these were made and notified in the Gazette without waiting for their enforcement as required by Section 10(2) *ibid*. The Committee observe that in future in Government should strictly follow the provisions of the Act in letter and spirit and the rules should be laid before the legislature at the earliest opportunity, immediately after these are framed/published without waiting for the date of their commencement, and the legislature be afforded to approve or disapprove or modify such rules at the earliest opportunity.

of necessary corrigendum issued when it comes to the notice of the Department.

Qualification and Status for the Post of Administrator :

The Committee, taking into consideration the definition of "Administrator" defined in Section 2 (a) of the Act, which means an officer appointed by the State Government to take over the Management of a college, desired to know as to what qualifications and status had been prescribed by the Government for appointment of an administrator.

The Department in their written reply stated that no qualification or status had been prescribed by the Government for the appointment of an Administrator of a Private College.

The Committee observed that if no qualifications and status had been prescribed in the rules, then a gazetted officer not below the rank of Class I should be appointed as administrator for the purpose to which (proposed) the Department agreed.

The Committee recommends that an Administrator of the Status of Gazetted Officer of Class I should invariably be appointed for the effective Management of the Private College whose Management is taken over by the Government and the necessary amendment to that effect be made in the Act or Rules, as the case may be, and the Committee informed.

On being enquired by the Committee, the Departmental Representative stated that the Government had so far taken over the Management of two Colleges, namely (i) D.A.V. College, Hassangarh (Rohtak) and (ii) Ahir College, Rewari (Mohindergarh) since 1977-78 and these were handed over to the Managing Committee and the Government had not yet completed the survey of the sick private colleges in the State. Then the Committee enquired what was the criteria of taking over the Private Colleges in the State. The Departmental representative stated that the Government initiated action on receipt of complaints, which pertained to irregularities in the maintenance of accounts, misutilization of grants and non payment of salaries to the staff etc.

The Committee recommends that the survey of sick private college/units be made and completed at the earliest and there should be some criteria prescribed by rules for taking over the Management of Private Colleges, receiving aid in the form of maintenance grant from the State Government, Local authority or University, for their proper Management.

The Committee observed that the Haryana Private Colleges (Taking over of Management) Rules, 1980 under Education Department Notification G. S. R. 18/H.A. 26/78/S.10/80, dated the 21st February, 1980, was published in the Haryana Government Gazette dated the 26th February, 1980 and these were not laid on the Table before the Legislature in its session (March and July, 1980) but were laid before the House as late as on 15th December, 1980.

7. THE HARYANA AFFILIATED COLLEGES (SECURITY OF SERVICE) RULES, 1980, FRAMED UNDER THE HARYANA AFFILIATED COLLEGES (SECURITY OF SERVICE) ACT, 1979.

Rule 4

- “4. (1) * * * *
- (2) * * * *
- (3) * * * *
- (4) * * * *
- (5) * * * *
- (6) * * * *
- (7) * * * *
- (8) * * * *
- (9) * * * *

(10) The inquiring authority shall, if the employee fails to appear within the specified time or refuses, or omits to plead, require the presenting officer to produce the evidence by which he proposes to prove the article of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may for the purpose of preparing his defence—

- (i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow the documents specified in the list referred to in sub-rule (3);
- (ii) submit a list of witness to be examined on his behalf.

Note—If the employee applies orally or in writing or the supply of the copies of the statements of witnesses mentioned in the list referred to in sub-rule (2), if any, the inquiring authority shall furnish him such copies as early as possible and in any case not later than three days before the commencement of the examination of the witness on behalf of the Managing Committee.

- (11) * * * *
- (12) * * * *
- (13) * * * *

(14) The inquiring authority may, in its discretion, if it appears necessary before the close of the case on behalf of the Managing Committee, allow the presenting officer to produce evidence not included in the list given to the employee or may itself call for new evidence or recall and re-examine any witnesses and in such case the employee shall be entitled to have if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the enquiry for three clear days before the production of such new evidence, exclusive of the date of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the employee an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the employee to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice.

Note—New evidence shall not be produced or called for or any witnesses shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced, originally.

- | | | | | |
|------|---|---|---|---|
| (15) | * | * | * | * |
| (16) | * | * | * | * |
| (17) | * | * | * | * |
| (18) | * | * | * | * |
| (19) | * | * | * | * |

(20) If the employee to who a copy of the article of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of these rules, the inquiring authority may hold the inquiry ex-parte.

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|------|---|---|---|----|
| (21) | * | * | * | ** |
|------|---|---|---|----|

The Committee recommends that in sub-rule (10), line 6 for the words "letter date" the words "later date" be substituted, and for note below the sub-rule (10) be substituted by a rule, or part thereof.

The Committee further recommends that in sub-rule (14), of rule 4, for the words "not include" the words "not included" be substituted and note below the sub-rule be converted into the part of that sub-rule.

The Committee also recommends that in sub-rule (20), for the words "to who" occurring before the words "a copy", the words, "to whom" be substituted.

Rule 6

"6. The Director, on receipt of such proposal and representation,

if any, may, after examining the record and giving the parties an opportunity of being heard, by an order in writing, give him approval to the imposition of the proposed punishment or refuse to give approval, if the proposal is found to be mala fide or by way of victimisation or not warranted by the facts and circumstances of the case".

9 The Committee recommends that in line 4, for the words "give him" occurring after the words "in writing" the words "give his" be substituted.

8. THE HARYANA LEGISLATIVE ASSEMBLY (FACILITIES TO MEMBERS) RULES, 1979, FRAMED UNDER THE HARYANA LEGISLATIVE ASSEMBLY (FACILITIES TO MEMBERS) ACT, 1979.

Rule 2

2. In these rules, unless the context otherwise requires,—

- | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|
| (a) *** | *** | *** |
| (b) *** | **** | ***** |
| (c) **** | ** | ** |
| (d) ** | ***** | **** |
| (e) "family" means the family as defined in the Punjab State Legislature Officers, Ministers, and Members (Medical Facilities) Rules, 1966, framed under the Punjab State Legislature Officers, Ministers and Members (Medical Facilities) Act, 1965; | | |
| (f) *** | ** | **** |
| (g) *** | *** | **** |
| (h) *** | ***** | **** |
| (i) ** | ***** | ** " |

The Committee was of the view that the definition of the "family" given in clause (e) be deleted and the remaining clauses be relettered as (e), (f), (g) and (h) respectively, to which the Department agreed to amend the rule.

The Committee recommends that the definition of "family" given in clause (e) be deleted as it is superfluous, and the remaining clause be renumbered as (e), (f), (g), and (h).

Rule 3

"3(1) A member desiring to obtain a house building advance shall make an application in form I, in duplicate, complete in all respects and duly certified by the Deputy Commissioner, to the Secretary. He shall also furnish an affidavit to the effect that he or any member of his family has no house in India and that he has not availed himself of any house building loan under any other scheme of any State Government or of the Govt. of India."

The Committee observed that the words "that he or any member of his family has no house in India and" be deleted from rule 3(1) as these are un-necessary and runs contrary to the object of the Act. The Department agreed to this proposal of the Committee and assured the Committee to delete the words from rule 3(1).

The Committee recommends that rule 3(1) be amended accordingly and the Committee be informed.

The Committee after going through sub-rules (1), (2) and (3) of rule 3, observed that the following explanation be added at the end of rule 3 :—

“Explanation.—The term ‘house building’ means and includes construction of a house or an addition/alteration/expansion or major repair of a house, which is owned by the Borrower.”

During the course of oral examination the Departmental representative agreed to amend the Act and rules accordingly and further suggested that advance should also be allowed for a built house.

The Committee recommends that a sum of Rupees not exceeding sixty thousand be granted to a Legislator—

- (i) purchasing a built house ; or
- (ii) building a house ; or
- (iii) effecting major repairs, additions or alterations to his house,

The Committee recommends that the relevant provisions of the Act and Rules be amended in the light of the said observation of the Committee, keeping in view the proposal made by the Government.

Rule 4

“4(1) After the requisite funds have been earmarked by the Finance Department, intimation in this regard will be sent to the Secretary and to the prospective Borrower who shall mortgage the plot on which the house is proposed to be constructed as also all structures to be constructed thereon, to the Government in form III and get the mortgage deed registered with the registering authority.”

- (2) The prospective Borrower shall submit to the Secretary a surety bond in form IV duly executed by a bonafide domicile of Haryana to the satisfaction of the Deputy Commissioner in respect of the said advance.
- (3) An agreement deed in form V shall be executed by the prospective Borrower and submitted to the Secretary along with the surety bond and a copy of registered mortgage deed.
- (4) The Secretary will have the authority to accept the surety bond and execute agreement deed on behalf of the Governor of Haryana.”

The Committee is happy to note that the following observations made by the Committee in regard to the said rule have been incorporated and notified in the Haryana Legislative Assembly (Facilities to Members) Rules, 1979 ;—

- (a) in sub-rule (1) for the words "to the Government in form III and get the mortgage deed registered with the registering authority words or the house wherein major repairs are to be carried out as the case may be, to the Government in form III and get the mortgage deed registered with the registering authority concerned" shall be substituted.
- (b) in sub-rule (2), for the words "surety bond in form IV duly executed by a bonafide domicile of Haryana to the satisfaction of the Deputy Commissioner" the word "personal bond in form IV" shall be substituted.
- (c) in sub-rule (3), the words "the surety bond and" shall be deleted.
- (d) after sub-rule (3), the following sub-rule shall be added :—
 "(3.A) In the case of an advance for purchasing a built house, the borrower shall submit to the Secretary a personal bond in form IV and also an agreement deed in form V. The house to be purchased shall be mortgaged to Government within a month of its purchase.
- (e) in sub-rule (4) for the words "surety bond" the words ?

The Committee made a large number of recommendations observation in respect of the Haryana Legislative Assembly (Facilities to Members) Rules, 1979, out of which the following were the main recommendations/observations :—

1. The requirement of 'surety bond' should be done away and 'personal bond' should be sufficient, to which the department agreed to amend the rules accordingly.
2. The payment of the advance for building the house should be by means of lump sum payment and not by instalments, to which the department agreed for a built house and in the other cases for the cost of construction of the house or major repairs into equal instalments.
3. The requirement of taking out Insurance Policy in respect of Motor Cars or House should be insisted upon, to which the department agreed in respect of the house alone.
4. The house building advance may be raised from 45,000 to 60,000 and for purchase of Motor Car to the extent of Rs. 40,000 instead of Rs. 30,000, to which the department agreed to amend the rules accordingly.

The Committee almost accepted and satisfy with the replies furnished by the department and the Government implemented and issued the Haryana Legislative Assembly (Facilities to Members) First Amendment Rules, 1980 published by the General Administration Department Notification No. G.S.R. 129/H.A. 9/79/S. 8/Amd (1)/80,

dated the 11th December, 1980. The Committee recommends that the Haryana Legislative Assembly (Facilities to Members) Rules, 1979, originally framed, and as amended by the Haryana Legislative Assembly (Facilities to Members) First Amendment Rules, 1980, be consolidated into one set of Rules and republished by the Government for facility of reference and the better administration of the law on the subject.

9. THE PUNJAB IMPROVED SEEDS AND SEEDLING RULES,
1950 FRAMED UNDER THE EAST PUNJABIM PROVED
SEEDS AND SEEDLING ACT 1949.

After thorough consideration of the East Punjab Improved Seeds and Seedlings Acts, 1949, and the rules framed thereunder, the Committee observed that the East Punjab Improved Seeds and Seedlings Rules, 1950 were framed in the years 1949 and 1950 respectively, and therefore, both the Acts and the Rules have become obsolete. The Committee recommends that the comprehensive Act and the Rules on the subject may be framed afresh keeping in view the present development of the seed and seedlings in the Haryana State.

APPENDIX I

"The first question that arises is what is the scope and functions of the Committee on Subordinate Legislation of the Haryana Vidhan Sabha.

The scope and functions of the Committee are set down in rules 242, 250 and 251 of the Rules of Procedure and Conduct of Business in the Haryana Legislative assembly. Rule 242 enjoins upon the Committee "to scrutinise and report to the House whether powers to make rules, regulations, sub-rules, bye-laws, orders etc. conferred by the Constitution of delegated by Legislature are being properly exercised within such delegation and consider such matters as may be referred to it by the Speaker".

The Constitution provides for a three-fold distribution of legislative power between the Union and the States: the Union List enumerates topics of legislation in respect to which Parliament has exclusive power to make laws; the State List enumerates topics of legislation in respect to which the Legislature of a State has exclusive power to make laws; and the Concurrent List enumerates topics in respect to which both Parliament and the Legislature of a State have power to make laws. The residuary power of legislation i.e. the power to make laws with respect to any matter not enumerated in the Concurrent List or the State List is vested in Parliament, and this power includes the power of making a law imposing any tax not mentioned in either of these Lists.

In the hierarchy of Legislation, a higher place is accorded to laws passed by Parliament. Inconsistency between laws made by Parliament and those made by a State Legislature, both acting under the Concurrent List, is resolved by making the law made by Parliament to prevail over the law made by the Legislature of the State which, to the extent of repugnancy, will be void.

Rules framed by the State Government under State Acts falling under the State List-List II of the Seventh Schedule.

As regards the subjects, falling in the State List viz, Public order, Police, Administration of Justice, Prisons, Local Government, Public Health and Sanitation; Hospitals and Dispensaries, Intoxicating Liquors, Libraries, Education, Agriculture, Water, Irrigation and Canals, Land, Fisheries, etc. There is no doubt that the State Legislature is competent to enact laws and the Committee on Subordinate Legislation of the State Legislature is competent to examine rules, regulations, orders etc. framed by the State Government, irrespective of the fact whether these are laid before the Legislature or not.

State/Central Acts falling under the Concurrent List-List III of the Seventh Schedule of the Constitution.

As already stated, both Parliament and the Legislature of a State are competent to enact laws in respect of the subjects falling in the Concurrent List, but if any provision of the law made by the

Legislature of a State in repugnant to any provision of law made by Parliament which Parliament is competent to enact or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then the law made by Parliament, whether passed before or after the law made by such State or, as the case may be, the existing law shall prevail and the law made by Legislature of the State shall, to the extent to repugnancy, be void.

Article 162 of the Constitution of India provides that the executive power of a State extends to matters with respect to which the Legislature of a State has authority to make laws, i.e. the subject enumerated in the State List, and the Concurrent List.

This goes to show that the Committee on Subordinate Legislation of the Haryana Vidhan Sabha is competent to examine the Rules framed by the State Government in respect of the Acts, falling in the Concurrent List whether such rules making powers are delegated by an Act of Parliament to the State Government or delegated by an Act of the State Legislature or by both of them.

There are several existing Central Acts on the subject falling under 'Concurrent List' provided for laying of the rules framed thereunder by State Governments before the respective State Legislatures, viz, the Motor Vehicles Act, 1939, the Industrial Disputes Act, 1947, the Hindu Marriage Act, 1955, the Suppression of Immoral Traffic in Women and Girls Act, 1956 and the Probation of Offenders Act, 1958.

A tentative list of the Acts made by the Parliament on the Subjects falling in the Concurrent List is appended as an Appendix to this Memorandum.

Now the question arises whether the Committee is competent to examine those rules, falling in the Concurrent List, framed under the power delegated by the Parliament and not required to be laid before the State Legislature, by an Act of Parliament. In this connection, it is pointed out, that there is a convention in the Haryana Vidhan Sabha that the Committee examines all the rules/regulations framed by the State Government under the Acts, falling in the State List or Concurrent List irrespective of the fact whether these have been placed on the table of the House or not.

Therefore, the suggestion of the Committee on Subordinate Legislation of the Lok Sabha in regard to Central Acts falling within the Concurrent List which empowers the State Government to make rules, the State Legislature can provide for laying of rules made under such Acts before the State Legislature, may not be acceded to on the following grounds :—

1. The State Government can not make any enactment to provide for laying the rules framed by the State Government under a Central Act before the State Legislature and to authorise the State Legislature to make amendments in such rules because the Parliament has exercised its power of enacting the Act on that subject. It seems that only the Parliament can make a provision in the principal Act itself to provide for laying of such rules

framed by the State Government before the State Legislature and to make amendments therein.

2. Secondly, we face no problem, as the Committee has established a convention that the Committee is competent to examine all the rules/regulations framed by State Government under various Acts falling in the State List or Concurrent List, irrespective of the fact whether these have been placed on the table of the House or not. To cite an example, the Committee on Subordinate Legislation of the Haryana Vidhan Sabha for the year 1979-80 scrutinised the Punjab Motor Vehicles Rules, 1940, framed under the Motor Vehicles Act, 1939, which Act also provides for laying the rules framed under the said Act on the Table of the House of a State Legislature vide section 133 (3) of the Act and the Committee on Subordinate Legislation of the Haryana Vidhan Sabha also scrutinised in the year 1974-75, the following rules framed under the Opium Act, 1878 (Central Act 1 of 1878) despite the fact that there was no provision in the Act for laying the rules framed thereunder before the State Legislature :—

1. The Punjab Opium Orders, 1956;
2. The Punjab Opium Confiscation and Rewards Rules 1954;
3. The Punjab Opium Prohibition Rules, 1959.

As regards the rules framed by the State Government under the power delegated by the State Legislature whether on the subject falling in the State list or concurrent List, the Committee may recommend to the State Government that in future all the Acts containing provision for making rules should invariably lay down that the rules should be laid on the Table of the House as soon as possible and the House should have the power to consider them.