

HARYANA VIDHAN SABHA

REPORT

OF

THE COMMITTEE

ON

SUBORDINATE LEGISLATION

TWENTY EIGHTH REPORT

1996-97

(Presented to the Haryana Vidhan Sabha on the 19th March 1997)



HARYANA VIDHAN SABHA SECRETARIAT CHANDIGARH

MARCH 1997

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COMPOSITION OF THE COMMITTEE

(1996 97)

Chairman

- * Shri Ganesh Lal
- ** Shri Ram Bhajan Aggarwal

Members

Shri Ram Bhaj
Shri Harsh Kumar
Shri Narendra Sharma
Shri Jaswinder Singh
Shri Balwant Singh Maina
Shri Dharambir Gauba
Advocate General

Special Invitee

Shri Satvinder Singh
Shri Relu Ram

Secretariat

- 1 P Raghavendra Rao I A S Secretary
- 2 Shri Data Ram Under Secretary

The Committee was constituted vide Haryana Vidhan Sabha Secretariat Notification No HVS LA (Sub Leg) 1/1996 97/33 dated the 6th June 1996

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- * Shri Ganesh Lal M L A resigned from the Chairmanship and membership of the Committee with effect from 11th August 1996 on his appointment as Minister vide Notification No HVS LA(Sub Leg) 1/96 97/40 dated the 13th August, 1996
 - ** Shri Ram Bhajan Aggarwal M L A was nominated as Member and Chairman of the Committee by the Speaker with effect from 23rd August 1996 vide Notification No HVS LA(Sub Leg) 1/96 97/43 dated the 23rd August, 1996 in the vacancy caused by the resignation of Shri Ganesh Lal for the remaining period of the year 1996 97

INTRODUCTION

1 The Chairman of the Committee on Subordinate Legislation having been authorised by the Committee to present the report on their behalf present this twenty eighth report to the House

2 The Committee consisting of eight Members (including the Advocate General) and two Special Invitees 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 6th June 1996 and was notified in the official Gazette vide Notification No HVS LA(Sub Leg) 1/1996 97/33 dated the 6th June 1996

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 also place on record their high appreciation for whole hearted co operation and assistance given by the Secretary Under Secretary Deputy Superintendent and staff of the Legislation Branch

Chandigarh

The 27th February 1997

RAM BHAJAN AGGARWAL

CHAIRMAN

REPORT

1 The Committee on Subordinate Legislation for the year 1996 97 consisting of eight members including the Chairman the Advocate General and two Special invitees 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 6th June 1996 and was notified in the official gazette vide notification No HVS LA(Sub Leg) 1/1996 97/33 dated the 6th June 1996

2 Shri Ganeshi Lal who was initially appointed as the Chairman of the Committee by the Speaker resigned from the Chairmanship and membership of the Committee w e f 11th August, 1996 and in his place Shri Ram Bhajan Aggarwal M I A was nominated by the Speaker as member and Chairman of the Committee w e f 23rd August 1996 vide notification No HVS LA(Sub-Leg) 1/1996 97/43 dated 23rd August, 1996

3 The Committee held 39 sittings till the presentation of this Report Before scrutinising the following Rules —

- (i) The Haryana Maternity Benefit Rules 1967 framed under the Maternity Benefit Act 1961
- (ii) The Bonded Labour System (Abolition) Rules 1976 framed under the Bonded Labour System (Abolition) Act, 1976
- (iii) The Punjab Shops & Commercial Establishments Rules 1958 framed under the Punjab Shops and Commercial Establishments Act 1958
- (iv) The Housing Board Haryana (Disposal of Property Betterment Charges, Eviction Assessment of Damages and Manner of Appeal) Rules 1975 framed under the Haryana Housing Board Act 1971 and
- (v) Haryana Juvenile Justice Rules 1988 framed under the Juvenile Justice Act 1986 (Central Act No 53 of 1986), the committee discussed its scope and functions and the procedure for scrutinising the Rules, Regulations Orders etc The Committee orally examined the representatives of the Labour Housing and Social Welfare Departments of the State Government

The Committee also examined the Commissioners and Secretaries to Government of Haryana of various Departments regarding non implementing of its outstanding recommendations/observations made by the Committee in its earlier reports

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 regulations 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 by 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 and
- (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 order 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 rules 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 etc framed by the Government under various Acts irrespective of the fact whether these have been laid on the Table of the House or not

The Committee is competent to send for persons papers or records if such a course is considered necessary for the discharge of its duties In this connection

attention is invited to rule 248 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly which reads as under —

248 (1) The Committee on Subordinate Legislation shall have power to require the attendance of persons or the production of papers or records if such a course is considered necessary for the discharge of its duties

Provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee the question shall be referred to the Speaker whose decision shall be final

Provided further that Government may decline to produce a document on the ground that its disclosure would be prejudicial to the safety or interest of the State

(2) The witness may be summoned by an order signed by the Secretary and shall produce such documents as are required for the use of the Committee

(3) It shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential

(4) No document submitted to the Committee shall be withdrawn or altered without the knowledge and approval of the Committee

The Committee has framed the working rules wherein the detailed procedure has been laid down. Generally the Committee from time to time select set of rules framed under the various Acts for their scrutiny and examine these 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/orders. After the rules/orders and the departmental representatives have been examined the Committee prepares the report and presents 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 have 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 enactment 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 reason for the delay in framing the rules. This is only by convention

3 Executive should ensure that no rules goes beyond the power delegated by legislature. If the rules go beyond the powers delegated by 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 amendments are made in the existing rules those 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

However some of the broad principles established by the Committee for the guidance of the executive are given below —

- (i) As far as possible guidelines/criteria to be followed by the authority concerned for the exercise or discretionary power vested in it should be laid down in the rules
- (ii) In case where the authority concerned deviates from a norm it should be required to record in writing the reasons for such deviation
- (iii) Before any adverse action is taken against a party it should be given a reasonable opportunity of being heard and after a decision adversely affecting a party has been taken it should have the right of appeal or representation as the case may be
- (iv) In order that the persons similarly placed are not treated differently the powers of exemption/relaxation should be exercisable in respect of categories or classes of persons as contra distinguished from individuals
- (v) In cases where an authority concerned is vested with the power to suspend a licence or supplies pending institution of regular proceedings a maximum time limit for suspension should be laid down in the rules
- (vi) The provisions of rules which may make a citizen liable to a penalty should be well defined and not worded vaguely
- (vii) In case of seizures and searches suitable safeguards like the presence of witness preparation of inventories of seized goods and giving a copy thereof to the persons concerned should be provided
- (viii) In case of rules relating to disciplinary proceedings not only the punishing powers of the competent authority should be precisely defined but the procedure to be followed by the competent authority be also laid down in the rules
- (ix) Statutory rules should be amended by Statutory rules only and not by executive orders
- (x) The rules made in exercise of powers delegated under statute are precise and free from ambiguity instead of being cryptic, sketchy or skeleton or needing further interpretations It should be in simple language so that different people cannot put different interpretations For example expressions like unreasonable large quantity reasonable interval or frequent intervals etc should be avoided

GENERAL OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

1 Delay in framing the Rules

The Committee reiterates the recommendations made in its previous twenty seven Reports and observes that ordinarily Rules should be framed as early as possible after the enactment of an Act and in no case the 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.

The Committee further recommends that whenever an Ordinance is promulgated the rules should be prepared simultaneously so that there should not be wide gap between the Ordinance/Act and the Rules.

2 Reference of Section under which Rules are framed

The main function of the Committee on Subordinate Legislation is to scrutinise and report to the House whether the power to make regulations, rules etc. conferred by the Constitution or delegated by Legislature are being properly exercised by the executive within the delegation. The Committee observes that the Government Department generally supply the copies of rules without the preamble or note above the rules with the result that it becomes rather difficult for Committee to know under what precise authority the rules have been framed. The Committee further observes that reference of the section under which each rule or order was framed is not indicated generally in the margin of each rule. The Committee is of the view that giving of reference of the section under which each rule has been framed in the margin of each rule is essential to enable the Committee and all concerned to know under what precise authority each rule has been framed.

The Committee reiterates the recommendations made in its earlier Reports that whenever rules are supplied to it the authority or the relevant section under which a particular rule or set of rules has/have been framed should also be mentioned in the margin of each rule.

If in the margin of each set of rules there is no reference of the section (s) under which each rule has been framed Government Departments may invariably supply a memorandum containing the reference to the relevant section of the Act under which each rule has been framed so that the Committee may be able to understand under what precise authority each rule has been framed and whether in any case the Government has transgressed the powers delegated by the Legislature.

The Committee further recommends that whenever several amendments are made in a set of rules the same may be republished after incorporating all the amendments made from time to time. This recommendation of the Committee should be observed meticulously.

3 (i) Supply of printed and up to date corrected copies of the Rules

The Committee observed that certain Departments supplied cyclostyled copies

of the rules for its scrutiny. During the scrutiny of the rules the Committee came across a large number of typographical/spelling mistakes in those 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 recommends that copies of the rules to be supplied to it 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 Department to do so it should be ensured that the copies of the rules etc are upto date meticulously compared and duly corrected before supplying these to the Committee to save its valuable time in pointing out such mistakes.

The Committee further recommends 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 by the concerned Department are implemented by the department and incorporated in the rules.

The Committee further recommends that whenever any Act is amended it should be looked that the relevant rules and forms are also amended so as to bring them in consonance with the change in the Act.

(ii) Footnote in the Act and Rules

It came to notice of the Committee that some times it is laid down in the Act and Rules that such Act and Rules shall come into force on such date as may be specified in the notification by the State Government. The Committee is of the view that in such circumstances the date of commencement of the Act and Rules should invariably be given in the footnote so that legislators in particular and the public in general may come to know as to from which date the Act and Rules had come into force.

The Committee further recommends that whenever any amendment is made in an Act or Rules framed thereunder it should also invariably be stated in the footnote the reference of the Act or Rules by which amendment has been made.

4 Publishing the Acts and Rules in Hindi

The Committee observes 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 in the State Legislature its authenticated Hindi translated version is also supplied to the Members. The Committee reiterates its earlier recommendation and recommends that all the Acts and Rules be translated into Hindi and made available to the legislators in particular and the public in general so that every body 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 thereunder in the Official Gazette. There is no provision for laying the same 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 recommends 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 which contain provisions for making rules should also invariably lay down provisions for laying of rules on the Table of the House as soon as possible.

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 regulations byelaw 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.

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

Sr 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 Implementation of recommendations of the Committee

The Committee observes with great regret that the work regarding the implementation of recommendations/observations 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 recommends that the action on the outstanding recommendations and observations 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.

alongwith the statement showing the action taken by the Government in the implementation of the recommendations/observations

8 Availability of Copies of Acts and Rules to Public

The Committee is of the view that copies of all the Acts and Rules framed thereunder as amended up to date are generally not available in the Government Press for the use of the Public. The Committee therefore recommends that copies of all the Acts and Rules made thereunder should be kept up to date in the Press for sale to the Public

NINETEENTH REPORT 1987 88

AGRICULTURE DEPARTMENT

The Haryana Cold Storage (Licencing and Regulation) Order 1979 framed under the Essential Commodities Act 1955

A copy of the Nineteenth Report of the committee on Subordinates Legislation of Haryana Vidhan Sabha which was presented to the House on 30th March, 1988 was sent to the Agriculture Department on 12th April 1988 with the request to intimate the action taken by the Government in implementation of observations/recommendations made by the Committee concerning the Haryana Cold Storage (Licensing and Regulation) Order 1979 framed under the Essential Commodities Act, 1955

The Committee in its twenty sixth report recommended to the Government to look into the matter and fix the responsibility for taking unreasonably long time and not implementing the recommendations of the Committee. The Committee also desired during the year 1994 95 that the recommendations made by them in this regard should be implemented without any further delay and Committee be informed accordingly

The Haryana Vidhan Sabha Secretariat during the years 1995 96 and 1996 97 issued many reminders to the Agriculture Department for implementing the recommendations/observations of the Committee in this behalf but the Agriculture Department failed to reply back.

The present Committee in its meeting held on 27th February 1997 again orally examined the Agriculture Department for not implementing the recommendations of the Committee. The Agriculture Department further requested to give three months more time for implementing the recommendations of the Committee. The Committee expresses its displeasure for not implementing the recommendations/observations made in its 19th report. However three months time was given to the Agriculture Department for implementing the recommendations

TWENTY FIFTH REPORT 1993 94

AGRICULTURE DEPARTMENT

The Rules Bye laws and Regulations made under the Punjab Agricultural Produce Markets Act, 1961

The Committee in its 26th report taking a lenient view in the matter agreed to give six months more time for implementing all the recommendations of the Committee as contained in its 25th Report in respect of Rules Bye laws and Regulations made under the Punjab Agricultural Produce Markets Act 1961

The Committee also recommended the department that they should initiate steps to implement their outstanding recommendations expeditiously and the Committee be informed of the action taken in the matter by the Agriculture Department. But the department failed to implement the recommendations and

ultimately the Committee on 27th February 1997 again orally examined the representatives of the Agriculture Department. The Committee was not convinced by the reasons advanced by the Agriculture Department in respect of inordinate delay in implementing its recommendations. The department asked another three months time for implementing the recommendations of the Committee. The Committee agreed to give another three months more time.

TWENTY SIXTH REPORT 1994 95

TOWN AND COUNTRY PLANNING DEPARTMENT

The Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules 1965 framed under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act 1963

A copy of the twenty sixth report of the Committee on Subordinate Legislation for the year 1994 95 was forwarded to the Town and Country Planning Department on 3rd April 1995 with the request to intimate the action taken in implementation of recommendations/observations made by the Committee in respect of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules 1965 framed under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 within two months. The Haryana Vidhan Sabha Secretariat issued many reminders to the department in this respect but the department failed to implement the recommendations of the Committee. The Committee in its meeting held on 27th February 1997 orally examined the representatives of the Town and Country Planning Department for not implementing the recommendations of the Committee made in its 26th report. The Department agreed to implement the recommendations within three months time. The Committee taking a lenient view in the matter agreed to give another three months time to the department.

TWENTY SEVENTH REPORT 1995 96

TRANSPORT DEPARTMENT

The Haryana Motor Vehicles Rules 1993 framed under the Motor Vehicles Act 1988 (Central Act 59 of 1988)

A copy of the twenty seventh report of the Committee on Subordinate Legislation for the year 1995 96 was forwarded to the Transport Department on 22nd March 1996 with the request to intimate the action taken in implementation of recommendations/observations made by the Committee in respect of the Haryana Motor Vehicles Rules, 1993 framed under the Motor Vehicles Act 1988 (Central Act 59 of 1988) within two months. But the department failed to implement the said recommendations/observations. The Committee in its meeting held on 27th February 1997 orally examined the representatives of the Transport Department. The department apologised for not implementing the recommendation within the stipulated time and requested the Committee to give another three months time for implementing the

recommendations The Committee agreed to give another three months time to the department

The Committee also recommends that the Transport Department should finalise the matter and amend the Haryana Motor Vehicles Rules, 1993 framed under the Motor Vehicles Act, 1988 suitably without any further delay and publish the same in the Haryana Government Gazette at an early date and the Committee be informed accordingly

TWENTY SEVENTH REPORT 1995 96

DEVELOPMENT AND PANCHAYATS DEPARTMENT

The committee in its twenty seventh report made some observations/ recommendations in respect of the Haryana Panchayati Raj (Elections) Rules 1994 framed under the Haryana Panchayati Raj Act 1994 and the Haryana Panchayati Raj Rules 1995 framed under the Haryana Panchayati Raj Act 1994

The department has implemented all the recommendations made by the committee except the recommendations in rule 10(3) 15 A (4) 30(7) of the Haryana Panchayati Raj (Elections) Rules 1994 framed under the Haryana Panchayati Raj Act 1994

The Committee in its meeting held on 27th February 1997 during the oral examination of the representatives of the Panchayat Department dropped the above said three recommendations

**SCRUTINY OF THE HARYANA MATERNITY BENEFIT RULES, 1967
FRAMED UNDER THE MATERNITY BENEFIT ACT, 1961 (CENTRAL ACT,
53 OF 1961)**

The Committee scrutinise the Haryana Maternity Benefit Rules 1967 framed under the Maternity Benefit Act 1961 and made the following observations/recommendations thereon

General Recommendations

1 While scrutinising the Haryana Maternity Benefit Rules 1967 framed under the Maternity Benefit Act, 1961 the Committee came across a large number of printing mistakes in the copies of the Rules supplied to the Committee which had resulted in unnecessary wastage of valuable time of the Committee in pointing out the spelling mistakes etc Therefore the Committee recommends that the Rules be got reprinted after implementing the recommendations/observations made by the Committee

Rule 2

2 Definition In these rules unless the context otherwise requires

(a) to (e)	*	*	*
	*	*	*
	*	*	*

(f) Section means a section of the Act

The Committee recommends that after clause (f) of Rule 2, the following clause be added

(g) The words and expression used but not defined in these rules shall unless the context otherwise requires have the same meaning as assigned to them in the Act.

Rule 3

3 Muster roll Section 20 and 28 (2) (1) The employer of every factory or plantation including an establishment belonging to Government in which women are employed shall prepare and maintain a muster roll in Form A and shall enter therein particulars such as the daily attendance of all women workers in the establishment

(2) and (3)	*	*	*
	*	*	*

The Committee recommends that in Rule 3, after the words "in Form 'A'," the words "and shall enter therein particulars such as the daily attendance of all women workers in the establishment." be deleted being superfluous

Rule 5

5 Proof Sections 6(5) and 28(2) (1) The fact that a woman is pregnant or has been delivered of a child or has undergone miscarriage or is suffering from illness

arising out of pregnancy delivery premature birth of child or miscarriage shall be proved by the production of certificate to that effect in Form C from

- (a) a Medical Officer of a regional hospital or of a dispensary set up by the State Government
- (b) a registered Medical Practitioner

(2) The fact that a woman has been confined may also be proved by the production of certified extract from a birth register maintained under the provisions of any law for the time being in force or a certificate signed by a qualified mid wife

(3) The fact that a woman has undergone miscarriage may also be proved by the production of a certificate signed by a qualified mid wife

(4) The fact of death of a woman or a child may be proved by the production of a certificate to that effect in form D from any of the authorities referred to in sub rule (1) or by the production of a certified extract from a death register maintained under the provisions of any law for the time being in force

(5) For the purposes of sub rules (2) and (3) the qualifications to be possessed by a mid wife shall be determined by the State Government on the recommendations of the Competent Authority The certificate from a qualified mid wife shall be in form E

The Committee recommends that between clauses (a) and (b) of Rule 5(1) the word "or" be added

The Committee also recommends that in Rule 5(2) between the words "certified" and "extract" the words "copy of an" be inserted, and in the last line for the word "qualified" the word "registered" be substituted, as also in the last line of Rule 5(3) for the word "qualified" the word "registered" be substituted

The Committee further recommends that in line 3 of Rule 5(4) between the words "certified" and "extract" the words "copy of an" be inserted and in line 3 of Rule 5(5) for the word "qualified" the word "registered" be substituted

Rule 8

- | | | | |
|-------------|---|---|---|
| (1) and (2) | * | * | * |
| | * | * | * |

(3) No Inspector shall physically examine or question any woman worker in respect of her pregnancy In case of any doubt in this respect he may immediately refer the case to a female registered medical practitioner for examination and report any fees payable for such an examination shall be paid by the employer of the woman worker

(4) The Inspector shall issue written instruction for ensuring the compliance of all or any of the provisions contained in the Act and for the production of the records in his office within 24 hours of the conduct of the inspection in case where the records are not made available at the time of inspection for the reasons beyond the control of the management

The Committee recommends that in line 4 of Rule 8(3), for the word "any" the word "and" be substituted

The Committee also recommends that in line 2 of Rule 8(4), the words "all or any of" be deleted being superfluous

Rule 9

9 Gross misconduct Sections 12 and 28(2) (g) The following facts shall constitute gross misconduct for the purposes of section 12 namely

- (a) Wilful destruction of goods or property of the employer of value exceeding Rs 100 However this shall not include the cost of defective production due to lack of skill
- (b) The nefarious immoral activities established to the satisfaction of the competent Authority
- (c) Serious crime such as theft fraud for dishonesty resulting in an ultimately conviction in a court of law
- (d) The acts of gross misconduct mentioned in sub rule(1) will however deprive a woman worker of the benefit only once and not for ever

The Committee recommends that clause (a) of Rule 9 be deleted and clauses "(b), (c) and (d)" be re numbered as clauses "(a), (b) and (c)"

Rule 10

10(1)	*	*	*
	*	*	*

(2) The appeal may be made in writing and either handed over personally or sent under a registered cover to the Competent Authority

The Committee recommends that in the end of sub rule (2) of rule 10, the words "and receipt thereof should be acknowledged" be added

Rule 12

12 (1) and (2)	*	*	*
	*	*	*

(3) When an appeal is received the Competent Authority shall call upon the said Inspector to produce before him before a fixed date a copy of his decision and other documents concerning the decision The Competent Authority shall if necessary also record the statements of the aggrieved person and of the Inspector and seek clarification if any is required

(4) Taking into account the documents the evidence produced before him and the facts presented to him or ascertained by him the Competent Authority shall give his decision

The Committee recommends that in the last line of sub rule (3) of rule 12,

between the words "if any," and "required", the word "as" be substituted in stead of the word "is"

The Committee recommends that in sub rule (4) of rule 12, between the words "him" and "the Competent Authority", apperaring in line 2, the words "and after hearing the parties" be added

Rule 14

14 Section 20 and 28 (2) (a) Records kept under the provisions of the Act and these rules shall be preserved for a period of two years from the date of their preparation

The Committee recommends that in line 2 of rule 14 for the word "these" appearing after the word "and", the word "the" be substituted

The Committee also recommends that in the end of rule 14, the word "three years from the date of last entry made therein" should be substituted instead of the word "two years from the date of their perparation"

Form B

"FORM B (See rule 4)

* * *

The Committee recommends that in the heading of Form B, for the words and figure "(See rule 4)", the words and figures "(See rules 4 and 6)" be substituted

Form H

"FORM H" [See rule II]

To

The Inspector
(appointed under the Maternity Benefit Act, 1961)

Sir

I (name of the woman employed in (name and full address of the establishment) having fulfilled the conditons laid down in the Maternity Benefit Act 1961 and the Rules thereunder am entitled to Rs being maternity benefit *and/or Rs being the medical bonus and/of Rs being wages for leave due under section 9 or 10 but the same has been improperly withheld by the employer He may therefore be directed to pay the aforesaid amount to me

Signature or thumb impression of the woman

Full Address

Date

The Committee recommends that in line 3 of Form H between the words "thereunder" and "am", the sign "," be inserted

Form L

"FORM L"

*	*	*
*	*	*

3 Number of women who worked for a period of not less then one hundred and sixty in the twelve months

*	*	*
*	*	*

The Committee recommends that in column 3 of Form L, between the words "sixty" and "in", the word "days" be inserted

Form O

"FORM O"

(See rule 15)

(Abstract of the Maternity Benefit Act, 1961 and the rules made thereunder)

1 and 2	*	*	*
	*	*	*

3 (1) Subject to the provisions of the Act, every woman who has actually worked in an establishment of the employer from whom she claim maternity benefit for a period not less than one hundred and sixty days including the days during which she was laid off shall be entitled to and her employer shall be liable for the payment of maternity benefit at the rate of her average daily wages or one rupee a day whichever is higher for the period of her actual absence not exceeding six weeks immediately preceding and including the day of her delivery and for the six weeks immediately following that day

Provided that qualifying period of the hundred and sixty days afore said shall not apply to a woman who has immigrated into the State of Punjab and was pregnant at the time of immigration

Provided further that where a woman dies during the period for which maternity benefit is payable to her the benefit shall be payable only for the days upto and including the day of her death. However where the woman having been delivered of a child dies during her delivery or during the period of six weeks immediately following the date of her delivery leaving behind in either case the child the employer shall be liable for the payment of maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child also dies during the said period then for the days upto and including the day of the death of the child

(2) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of a certificate in Form B stating that she is pregnant and is expected to be delivered of a child within six weeks of the date of production of the certificate and the amount due for the subsequent period shall be paid by the employer to the woman within forty eight hours of production of the certificate in Form C or Form E stating that she has been delivered of a child or production of a certified extract from a Birth Register maintained under the provisions of any law for the time being in force

4 * * *

5 (1) Every woman entitled to maternity benefit under the Act shall also be entitled to receive from her employer a medical bonus of twenty five rupees if no prenatal confinement and post natal care is provided for by the employer free of charge The medical bonus shall be paid along with the second instalment of the maternity benefit

(2) In case of miscarriage a woman shall on production of a certificate in Form C or Form B be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage The wages shall be paid within 48 hours of production of the certificate in Form C or Form B

(3) A woman suffering from illness arising out of pregnancy delivery premature birth of child or miscarriage shall on production of a certificate in Form C be entitled in addition to the period of absence allowed to her on account of maternity or miscarriage as the case may be to leave with wages at the rate of maternity benefit for a maximum period of one month The wages for the leave period shall be paid within 48 hours of the expiry of the period

6 Every woman delivered of a child who returns to duty after such delivery shall in addition to the interval for rest allowed to her be allowed in the course of her daily work two breaks of 5 minutes duration for nursing the child until the child attains the age of fifteen months An extra sufficient period depending upon the distance to be covered shall be allowed for the purpose of the journey to and from the creche or the place where the children are left by women while on duty provided that such extra period shall not be less than 5 minutes and more than 15 minutes duration

7 to 9 * * *

* * *

10 (a) The employer shall supply to every woman employed by him at her request free of cost copies of Forms B C D E F G H and I

(b) The failure to submit a notice appeal or complaint in the prescribed form will not affect the right of a woman entitled to receive maternity benefit or any other amount due under the Act Where a notice appeal or complaint has been received in a form other than the prescribed form the authority concerned shall within fifteen days of the receipt of such notice appeal or complaint require the woman to submit the notice appeal or complaint as the case may be in the prescribed form

The Committee recommends that in entry 3 for the words "or one rupee a day" the words "minimum wages per day fixed by the Haryana Government" may be substituted due to escalation of prices

The Committee also recommends that the first proviso to entry 3 (1) be deleted

The Committee recommends that in entry 5(1) for the words "twenty five" the words "two hundred and fifty" be substituted

The Committee also recommends that in line 3 of entry 6, instead of the figure "5", the figure "10" be substituted

The Committee further recommends that in line 9 of entry 5, for the words "to and form", the words "to and from" be substituted

The Committee further recommends that in the last line of entry 10(b), between the words "complaint" and "as", the sign "," be inserted

SCRUTINY OF THE BONDED LABOUR SYSTEM (ABOLITION) RULES, 1976 FRAMED UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

The Committee scrutinise the Bonded Labour System (Abolition) Rules, 1976 framed under the Bonded Labour System (Abolition) Act, 1976 but did not made any recommendations/observations in this respect

SCRUTINY OF THE PUNJAB SHOPS AND COMMERCIAL ESTABLISHMENTS RULES, 1958 FRAMED UNDER THE PUNJAB SHOPS AND COMMERCIAL ESTABLISHMENTS ACT, 1958

The Committee scrutinise the Punjab Shops and Commercial Establishments Rules 1958 framed under the Punjab Shops and Commercial Establishments Act 1958 and made the following observation/recommendation thereon —

General Recommendation

1 While scrutinising the Punjab Shops and Commercial Establishments Rules 1958 framed under the Punjab Shops and Commercial Establishments Act 1958 the Committee came across a large number of printing mistakes in the copies of the Rules supplied to the Committee which had resulted in unnecessary wastage of valuable time of the Committee in pointing out the spelling mistakes. Therefore, the Committee recommends that the Rules be got reprinted

Housing Dept

SCRUTINY OF THE HOUSING BOARD, HARYANA (DISPOSAL OF PROPERTY, BETTERMENT CHARGES, EVICTION, ASSESSMENT OF DAMAGES AND MANNER OF APPEAL) RULES, 1975 FRAMED UNDER THE HARYANA HOUSING BOARD ACT, 1971

The Committee scrutinise the Housing Board, Haryana (Disposal of Property, Betterment Charges, Eviction, Assessment of Damages and Manner of Appeal) Rules, 1975 framed under the Haryana Housing Board Act, 1971 and made the following observations/recommendations thereon —

General Recommendations

1 While scrutinising the Housing Board Haryana (Disposal of Property Betterment Charges Eviction Assessment of Damages and Manner of Appeal) Rules 1975 framed under the Haryana Housing Board Act, 1971 the Committee came across a large number of printing mistakes in the copies of the Rules supplied to the committee which had resulted in unnecessary wastage of valuable time of the Committee in pointing out of the spelling mistakes etc Therefore, the Committee recommends that the Rules be got reprinted after implementing the recommendations/ observations made by the Committee

2 The Committee observed that the Haryana Housing Board Act, 1971 was enacted in the Year 1971 whereas the Housing Board Haryana (Disposal of Property Betterment Charges Eviction Assessment of Damages and Manner of Appeal) Rules 1975 were framed in the year 1975 The Committee would like to know as to how the purpose of the Act in the absence of rules was carried out during the period from 1971 to 1975 The Committee would like to know the reasons of delay in framing the rules

Rule 5

5 The rate of interest chargeable in respect of betterment charges under sub section (1) of section 42 shall be seven and half per cent per annum

The Committee recommends that in rule 5, the rate of interest chargeable in respect of betterment charges, may be fixed ten percent instead of seven and a half percent per annum

Rule 6

(1) to (6)	*	*	*
	*	*	*

(7) When the hearing of an application is complete the Tribunal shall pronounced its decision

(8) to (11)	*	*	*
	*	*	*

The Committee recommends that in rule 6(7) for the word "pronounced", the word "pronounce" be substituted

Rule 8

8 (1) A notice under sub section (1) and the proviso to sub section (1) of Section 51 and sub section (1) and (2) of Section 52 may be served by any officer or servant in the employ of the Board —

- (a) By giving or tendering it to the person to whom it is addressed,
- (b) If such person is not found by giving or tendering it to some other adult member or servant of the family of the concerned person
- (c) Where the person to whom it is addressed or some other adult member or servant of the family of the concerned person refuses to receive the notice or where the serving officer after using all due and reasonable diligence cannot find the person and there is no agent empowered to accept service of notice on his behalf nor any other person to whom service can be made the serving officer shall affix a copy of the notice on the outer door or some other conspicuous part of the house in which the person ordinarily resides or carries on business or personally works for gain
- (d) Where for any reason whatsoever the notice is returned unserved the serving officer may either in lieu of or in addition to direct the notice to be served by registered post addressed to the person or his agent empowered to accept service at the place where the person or his agent ordinarily resides or carries on business or personally works for gain

(2) An acknowledgement purporting to be signed by the person or the agent or any endorsement by a postal employee that the person or the agent refused to take delivery may be deemed to be prima facie proof of service

The Committee recommends that in the last but one line of rule 8(I) for the words "any officer or servant in the employ of the Board" the words "any officer or servant authorised in this behalf by the Board" be substituted

The Committee also recommends that in clauses (b) and (c) of Rule 8 the words "or servant" be deleted, and in clause (d) line 3 of rule 8 for the word "the" the word "be" be substituted

"FORM A
(See rule 41)

WHEREAS the Housing Board Haryana has formulated a housing scheme known as

AS WHEREAS land bearing No covered by the said scheme will in the opinion of the Board increase in value

AND WHEREAS betterment charges are leviable in respect of such land as per the provisions of the Haryana Housing Board Act, 1971 notice is hereby given to Shri/Shrimati owner/person having interest in the land that betterment charges are proposed to be assessed and levied and that he/she may make a representation

in writing within a period of thirty days from the date of receipt of this notice either in person or through his/her legal adviser against the proposed assessment and levy

The Committee recommends that in sub heading of Form 'A' for the figure "41", the figure "4" be substituted

SCRUTINY OF THE HARYANA JUVENILE JUSTICE RULES, 1988 FRAMED UNDER THE JUVENILE JUSTICE ACT, 1986 (CENTRAL ACT NO 53 of 1986)

The Committee scrutinise the Haryana Juvenile Justice Rules 1988 framed under the Juvenile Justice Act, 1986 (Central Act No 53 of 1986) and made the following observations/recommendations thereon —

General Recommendations

1 While scrutinising the Haryana Juvenile Justice Rules 1988 framed under the Juvenile Justice Act, 1986 (Central Act No 53 of 1986) the Committee came across a large number of printing mistakes in the copies of the Rules supplied to the Committee which had resulted in unnecessary wastage of valuable time of the Committee in pointing out the spelling mistakes etc. Therefore, the Committee recommends that the Rules be got reprinted after implementing the recommendations/observations made by the Committee

Rule 10

10 (1) When a juvenile detained in an institution under the provisions of the Act or placed under the care of a fit person or fit institution is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment or is found addicted to a narcotic drug or psychotropic substance the juvenile may be removed by an order of the authority empowered in this behalf to an approved place set up for such purpose for the remainder of the term for which he has to be kept in custody under the order of the competent authority or for such period as may be certified by a medical officer to be necessary for the proper treatment of the juvenile

(2) to (4)	*	*	*
	*	*	*

The Committee recommends that in line 5 of Rule 10 (1) for the words "empowerhd", the word "empowered" be substituted

Rule 12

12 (1) The property other than money or valuables belonging to a juvenile received or detained in an institution shall be disposed of in the following manner namely —

(a) If it consist of absence pictures or literature tobacco snuff opium drug or liquor or perishable articles of trivial value it shall be destroyed

(b) to (d)	*	*	*
	*	*	*
(2) to (6)	*	*	*
	*	*	*

(7) When an inmate of an institution dies therein the property left by the deceased and the money deposited in his name shall be handed over by the Superintendent to any person who establishes his claim there to and an executes an indemnity bond. A receipt shall be obtained from such person for having received such property and the amount. If no claimant appears within a period of one year from the date of death of such inmate the property and amount shall be handed over to the police for disposal in accordance with the provisions of sections 25 to 27 of the Police Act 1861.

(8)	*	*	*
-----	---	---	---

The Committee recommends that in Rule 12 (1) (a) for the word "absence", the word "obscene" be substituted.

The Committee further recommends that in line 1 of the Rule 12 (7), for the word "therein", the word "therein" be substituted.

The Committee also recommends that in line 3 of this sub rule, after the word "Superintendent", the words, "to his parent or guardian or" be inserted.

The Committee further recommends that in line 3 of this sub rule, the word "an" appearing before the word "executes", be deleted being superfluous.

Rule 13

13 (1) The State Government as far as possible may set up separate observations homes for neglected and delinquent juvenile. Separate homes may be established for juveniles below and above the age of 12 years. In any case boys above 12 years shall be lodged in separate homes.

(2)	*	*	*
(3) (a) to (h)	*	*	*
	*	*	*

(i) verification by the officer in charge or order of the competent authority
indentification marks register entries cash property etc

(4) (a) & (b)	*	*	*
	*	*	*

(c) institutional discipline and standards of behaviour respect for elders
teachers etc

(d) & (e)	*	*	*
	*	*	*

(5) & (6) * * * * *

The Committee recommends that in Rule 13 (3) (i) line 2, the spelling of the word "indentification" be got printed correctly, and in rule 13 (4) (c) line 1, the spelling of the "behaviour" be also got printed correctly

Rule 16

16 (1) Each juvenile shall be provided with clothing and bedding including customary under garments towels jersey for winter school uniform for juveniles attending outside school duty bed sheets blanket pillow chappel or shoes as required and toothpowder soap oil comb etc as per the scale laid down below —

	<u>Name of Articles</u>	<u>Number</u>	<u>Period</u>
1	Pajama	1	One year
2	Kurta	1	One year
	3 to 31	*	*
		*	*

The Committee recommends that the number of one Pajama and Kurta each being provided now in one year is too short and these be increased to 2 and for that purpose, in Rule 16(1), against items No 1 & 2, under the heading 'Number', the figure '1' be substituted by the figure '2'

Rule 21

21 (1) to (3) (a) to (d)

* * *

* * *

(e) social adjustment recreation group work activities guidance anti counselling

(f) to (k) * * *

* * *

(4) * * *

The Committee recommends that in Rule 21 (3) (e), for the word "eounselling", the word "counselling" be substituted

Rule 26

26 (1) to (4)

* * *

* * *

(5) The period of such leave shall be deemed to be part of the period of his detention in the institution. The time which elapses after the failure of an inmate to return to the institution within the stipulated period shall be excluded in computing the period of his detention in the institution.

The Committee recommends that in line 4 of Rule 26 (5), for the word "institution" the word "institution" be substituted

Rule 28

28 (1) The licence granted under sub section (1) of section 49 of the Act shall be as far as possible be in form VIII

(2) After the order of release on licence in form VIII is issued by the State Government it shall be read out to the licence and his signature obtained. The conditions on which he has been released on licence shall be explained to him in detail. The copies of the order of release on licence shall be sent to the parent or guardian and the probation officer who will supervise the juvenile during the licence period. On the release of any juvenile on licence information shall be sent by the Superintendent to the competent authority under whose orders the juvenile was kept in the institution.

The Committee recommends that in line 2 of Rule 28 (1) after the word "shall" the word "be" be deleted being superfluous

The Committee also recommends that in line 2 of Rule 28 (2) for the word "licence" the word "licensee" be substituted

Rule 29

29 (1) to (5)	*	*	*
	*	*	*

(6) The Superintendent shall order the discharge of any juvenile the period of whose detention has expired and inform the Chief Inspector within 7 days of the action taken by him. If the date of release falls on a Sunday or any other public holidays the juvenile may be released on the preceding day entry to that effect being made in the register of discharge. The Superintendent shall in appropriate cases order the payment of subsistence at such rates as may be fixed from time to time and the railway or road or both the fare as the case may be.

(7) & (8)	*	*	*
	*	*	*

The Committee recommends that in line 3 of Rule 29 (6), for the word "released" the word "release" be substituted

Rule 32

32 (1) to (6)	*	*	*
	*	*	*

(7) A Juvenile shall not be received into an institution after the date of the receipt by the Superintendent of the institution of a notice of withdrawal of the certificate of recognition or after the date of notice of resignation of the certificate or recognition. The obligation of the Superintendent to teach train lodge cloth and feed any juvenile detained in the institution at the respective dates aforesaid shall except so far as the authority concerned otherwise directs continue until the withdrawal or resignation of the certificate or recognition takes effect

(7) & (8)	*	*	*
	*	*	*

The Committee recommends that in line 4 of Rule 32(7), after the word "teach" the sign "," be added

Rule 33

33 An institution certified or recognised under section 9 10 or 11 of the Act may during the period certification or recognition is in force may apply for grant in aid by the State Government for maintenance of juveniles received by them under the provision of the Act and for expenses incurred on their education treatment vocational training development and rehabilitation. The grant in aid may be admissible at such rates in such manner and subject to such conditions as may be determined by the State Government from time to time

The Committee recommends that in line 2, the word 'of' be inserted between the words "period" and "certification"

Rule 36

36 A Visitors Book shall be maintained in which the persons authorised to visit the institution shall record the dates of their visits with any remarks or suggestions which they may think proper. The Superintendent shall forward a copy of every such entry to the Chief Inspector with such remarks as he may desire to offer in explanation or otherwise and thereon the Chief Inspector shall issue such orders as he may deem necessary

The Committee recommends that in line 3, the word "She" be corrected as "The"

Rule 45

45 (1) to (14)	*	*	*
	*	*	*

Form 46 (15) The Board of Management may delegate to one or more of the members such of its powers which in its opinion are merely ministerial or procedural. As far as possible the following forms shall be used for the purposes noted against each —

The Committee recommends that against sub rule 15 of Rule 45, the words "Form 46" written in the margin, be deleted being superfluous

1997

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