

**COMMITTEE ON SUBORDINATE  
LEGISLATION**

(SIXTH LOK SABHA)

**TWENTIETH REPORT**

**ON**

**Laying of Rules Framed by State Governments  
Under Central Acts Before State Legislatures/  
Parliament**

*(Presented on the 27-4-1979)*



**LOK SABHA SECRETARIAT  
NEW DELHI**

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE  
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(1978-79)

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Shri Y. Sahai—*Chief Legislative Committee Officer.*

## REPORT

### I

#### INTRODUCTION

1. I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this their Twentieth Report. This Report deals exclusively with laying of Rules framed by State Governments under Central Acts before State Legislatures|Parliament.

2. The Committee considered the matter at their sittings held on the 28th April, 1975, 5th August, 1976 and the 23rd September, 1978. At their sitting held on the 30th March, 1978, the Committee took evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department) on this subject.

3. As desired by the Committee at their sitting held on the 8th December, 1978, the Chairman discussed the draft Report with the Hon'ble Speaker. The Speaker desired that the draft Report might be circulated to all State Legislative Assemblies|Councils for being placed before their respective Speakers|Chairmen as well as Chairmen, Committees on Subordinate Legislation of State Legislatures for their views.

4. The draft Report was accordingly circulated to State Legislatures etc. as mentioned above. A copy of the draft Report was also sent to Chairman, Rajya Sabha Committee on Subordinate Legislation for Comments. In the letter of 1st March, 1979 sending the draft Report to all the State Assemblies|Councils, it was mentioned that in case their comments were not received by the 31st March, 1979, it would be presumed that the recommendations contained in the draft Report had the concurrence of their Speakers|Chairmen|Chairmen of Committees on Subordinate Legislation.

5. A statement showing the comments on the draft Report received from various State Legislatures etc. and the Chairman, Rajya Sabha Committee has been appended to the Report (Appendix VII). The Committee have also had the benefit of such comments while considering the matter.

6. The Committee after taking into consideration the comments received from the State Legislatures etc. considered and adopted this Report at their sitting held on the 19th April, 1979. The relevant Minutes of the sittings which form part of the Report are appended to it.

7. A statement showing the summary of recommendations|observations of the Committee is also appended to the Report (Appendix I).

under the said rule 317, it is submitted that the Committee would have the necessary ancillary powers of calling for copies of the rules. In pursuance of said rule 317, the Committee may also consider whether the object which it has in view can be achieved by issuing suitable instructions. The question whether any more efficacious alternative arrangements are feasible will be further considered and a reply in this respect will be sent in due course if we are able to devise a better alternative.

As there are quite a number of Central enactments under which State Governments have powers to make rules, the approach suggested above will mean the scrutiny of as many as 22 sets of rules (one set for each State) with respect to each enactment. The number of sets will be more if the Union territories are also to be taken into account. This will also involve additional work by way of correspondence with State Governments, preparation of Hindi Translation of the rules, securing time for the parliamentary business for the laying of rules and informing the State Governments about the reactions of Parliament/Committee on Subordinate Legislation. Before a decision is taken, the practical implications of these will also have to be taken into consideration. If the powers under rule 317 referred to in above paragraph 7 are invoked on a selective basis, the procedure will be less informal."

36. The Committee note that a number of Central Acts dealing with matters enumerated in the Concurrent List as well as in the Union List contained in the Seventh Schedule to the Constitution delegates rule making power to State Governments. There is no provision in these Acts excepting a few for laying of the rules framed thereunder by State Governments on the Table either of the State Legislatures or Parliament with the result that these rules escape legislative scrutiny. The Committee have always been of the opinion that rules framed by the Executive should not escape such scrutiny and there must be some legislative machinery to ensure that the delegated powers are exercised properly and within such delegation.

37. The Committee on Subordinate Legislation (Second Lok Sabha), after considering the pros and cons of adopting either of the two courses i.e. laying the rules framed by State Governments under the Central Acts before State Legislatures or Parliament, had come to the conclusion that the better course would be to request the State Governments to have laws enacted by their Legislatures to provide

for laying of the rules framed by them under a Central Act or State Act before the State Legislatures and for their modification, if any, by the respective Legislatures. (Vide paras 46—52 of Seventh Report—Second Lok Sabha). The Committee note that but for Orissa and U.P. Governments no other State Government have enacted such a law so far.

38. The Committee are of the opinion that in so far as rules framed by State Governments under Central Acts on Concurrent subjects are concerned, there is no bar, legal or otherwise, in their scrutiny by the State Committees on Subordinate Legislation. In this connection, the Committee note the opinion of the Ministry of Law that a State Legislature could make a law providing for laying before it and subject to modification by it of rules framed by the State Government under a Central Act in respect of matters enumerated in the Concurrent List. No specific authority of Parliament is necessary for enabling a State Legislature to make such a law. There is also no legal bar if a State Legislature makes a provision in its Rules of Procedure or alternatively the Presiding Officer issues a direction, empowering the Committee on Subordinate Legislation of the State Legislature to examine the rules framed by State Government under a Central Act on a Concurrent subject, whether such rules are laid before the State Legislature or not. During the course of evidence before the Committee, the representatives of the Ministry of Law have also conceded that a provision could be made in the Central Acts on Concurrent subjects requiring the State Government to simply lay the rules framed thereunder by them before the State Legislature. The Committee note in this connection that a provision on these lines has in fact been made in the Industrial Relations Bill, 1978.

39. The Committee, therefore, recommend the Ministry of Law, Justice and Company Affairs (Legislative Department) to incorporate such a provision in all Central Acts on Concurrent subjects which delegate rule-making power to State Governments.

40. The Committee note the following difficulties which would arise if the rules framed by State Governments under Central Acts on Union subjects are required to be laid before Parliament:—

- (i) No particular Central Minister would be responsible for having framed them or for laying them since the rules would not be framed by an authority subordinate to or under the control of any Central Minister;

(ii) Rules framed by State Governments would be based on local conditions and material facts within their knowledge and unless all these are made known to Parliament, the discussion would not be comprehensive; and

(iii) If such rules were discussed in Parliament it would be impossible to draw a line to stop criticism of State Government concerned or their officers either directly or indirectly. Such a discussion was likely to be misunderstood by the State Government and affect Centre-State relations. Moreover the Central Minister will have no material to reply to such criticism.

41. In view of the above practical difficulties and the federal character of the Constitution, the Committee feel that it will be more appropriate if such rules are also scrutinised by some State Legislative machinery. For this purpose, a procedure could be devised whereby even in the absence of a statutory provision, these rules are taken up for scrutiny by the Committee on Subordinate Legislation of the State Legislatures.

42. The Committee are of the opinion that there would be no Constitutional impropriety if the rules framed by a State Government under a Central Act on a Union subject are laid before the State Legislature for the information of Members. In this connection, the Committee are not inclined to agree with the opinion of the Ministry of Law that a State Legislature by permitting these rules to be laid before it would be impinging upon the jurisdiction of Parliament. The Committee feel that in reaching that opinion the Ministry of Law had acted with over-caution and taken too legalistic a view of the problem. The Committee note that the Ministry of Law have agreed that a recommendation by the Committee on Subordinate Legislation of a State Legislature on a rule framed under a Central Act relating to Union List is not equivalent to a law made by the State Legislature on a 'Union subject'. The Committee are, therefore, of the view that a State Committee on Subordinate Legislation would not be exceeding their jurisdiction if they scrutinise the rules framed by State Government on a Union subject and send their suggestions to the State Government. However, in such an arrangement the State Legislature will have as such no power to modify the rules.

43. The Committee also see no Constitutional inhibition if the Speaker of a State Legislature issued a direction empowering the State Committee on Subordinate Legislation to examine such rules

even if they are not laid on the Table. The Committee do not agree with the opinion of the Ministry of Law that such a direction does not appear to be intra-vires Article 208 of the Constitution.

44. The Committee also desire that such State Legislatures as do not have Committee on Subordinate Legislation should be requested to constitute these Committees.

NEW DELHI;  
The 19th April, 1979.

SOMNATH CHATTERJEE,  
Chairman,  
Committee on Subordinate Legislation.



## APPENDIX I

(Vide para 7 of the Report)

### Summary of main Recommendations/Observations made by the Committee

S. No.	Para No.	Summary
(1)	(2)	(3)
1(i)	33	The Committee note that a number of Central Acts dealing with matters enumerated in the Concurrent List as well as in the Union List contained in the Seventh Schedule to the Constitution delegates rule-making power to State Governments. There is no provision in these Acts excepting a few for laying of the rules framed thereunder by State Governments on the Table either of the State Legislatures or Parliament with the result that these rules escape legislative scrutiny. The Committee have always been of the opinion that rules framed by the Executive should not escape such scrutiny and there must be some legislative machinery to ensure that the delegated powers are exercised properly and within such delegation.
1(ii)	34	The Committee on Subordinate Legislation (Second Lok Sabha), after considering the pros and cons of adopting either of the two courses i.e. laying the rules framed by State Governments under the Central Acts before State Legislatures or Parliament, had come to the conclusion that the better course would be to request the State Governments to have laws enacted by their Legislatures to provide for laying of the rules framed by them under a Central Act or State Act before the State Legislatures and for their modification, if any, by the respective Legislatures. (Vide paras 46-52 of Seventh Report-Second Lok Sabha). The Committee

(1)	(2)	(3)
		note that but for Orissa and U.P. Governments no other State Government have enacted such a law so far.
1 (iii)	35	<p>The Committee are of the opinion that in so far as rules framed by State Governments under Central Acts on Concurrent subjects are concerned, there is no bar, legal or otherwise, in their scrutiny by the State Committees on Subordinate Legislation. In this connection, the Committee note the opinion of the Ministry of Law that a State Legislature could make a law providing for laying before it and subject to modification by it of rules framed by the State Government under a Central Act in respect of matters enumerated in the Concurrent List. No specific authority of Parliament is necessary for enabling a State Legislature to make such a law. There is also no legal bar if a State Legislature makes a provision in its Rules of Procedure or alternatively the Presiding Officer issues a direction, empowering the Committee on Subordinate Legislation of the State Legislature to examine the rules framed by State Government under a Central Act on a Concurrent subject, whether such rules are laid before the State Legislature or not. During the course of evidence before the Committee, the representatives of the Ministry of Law have also conceded that a provision could be made in the Central Acts on Concurrent subjects requiring the State Government to simply lay the rules framed thereunder by them before the State Legislature. The Committee note in this connection that a provision on these lines has in fact been made in the Industrial Relations Bill, 1978.</p>
1 (iv)	36	<p>The Committee, therefore, recommend the Ministry of Law, Justice and Company Affairs (Legislative Department) to incorporate such a provision in all Central Acts on Concurrent sub-</p>

(1)	(2)	(3)
		jects which delegate rule-making power to State Governments.
1 (v)	37	<p>The Committee note the following difficulties which would arise if the rules framed by State Governments under Central Acts on Union subjects are required to be laid before Parliament:—</p> <ol style="list-style-type: none"> <li data-bbox="998 312 1375 448">(i) No particular Central Minister would be responsible for having framed them or for laying them since the rules would not be framed by an authority subordinate to or under the control of any Central Minister;</li> <li data-bbox="998 453 1375 583">(ii) Rules framed by State Governments would be based on local conditions and material facts within their knowledge and unless all these are made known to Parliament, the discussion would not be comprehensive; and</li> <li data-bbox="998 589 1375 818">(iii) If such rules were discussed in Parliament, it would be impossible to draw a line to stop criticism of State Government concerned or their officers either directly or indirectly. Such a discussion was likely to be misunderstood by the State Government and affect Centre-State relations. Moreover the Central Minister will have no material to reply to such criticism.</li> </ol>
1 (vi)	38	<p>In view of the above practical difficulties and the federal character of the Constitution, the Committee feel that it will be more appropriate if such rules are also scrutinised by some State Legislative machinery. For this purpose, a procedure could be devised whereby even in the absence of a statutory provision, these rules are taken up for scrutiny by the Committee on Subordinate Legislation of the State Legislatures.</p>
1 (vii)	39	<p>The Committee are of the opinion that there would be no Constitutional impropriety if the</p>



- (1) (2) (3)
- rules framed by a State Government under a Central Act on a Union subject are laid before the State Legislature for the information of Members. In this connection, the Committee are not inclined to agree with the opinion of the Ministry of Law that a State Legislature by permitting these rules to be laid before it would be impinging upon the jurisdiction of Parliament. The Committee feel that in reaching that opinion the Ministry of Law had acted with over-caution and taken too legalistic a view of the problem. The Committee note that the Ministry of Law have agreed that a recommendation by the Committee on Subordinate Legislation of a State Legislature on a rule framed under a Central Act relating to Union List is not equivalent to a law made by the State Legislature on a 'Union subject'. The Committee are, therefore, of the view that a State Committee on Subordinate Legislation would not be exceeding their jurisdiction if they scrutinise the rules framed by State Government on a Union subject and send their suggestions to the State Government. However, in such an arrangement the State Legislature will have as such no power to modify the rules.

- 1(viii) 40 The Committee also see no Constitutional inhibition if the Speaker of a State Committee on Subordinate Legislation issue a direction empowering the State Subordinate Committee on Legislation to examine such rules even if they are not laid on the Table. The Committee do not agree with the opinion of the Ministry of Law that such a direction does not appear to be intra-vires Article 203 of the Constitution.

- 1(ix) 41 The Committee also desire that such State Legislatures as do not have Committee on Subordinate Legislation should be requested to constitute these Committees.