

COMMITTEE ON SUBORDINATE LEGISLATION

Introduction

In a modern welfare state, government activity has pervaded almost every field of human behaviour, thus necessitating enactment of multifarious laws to regulate this ever-widening activity. In such a situation, it is not practicable for Parliament or a State Legislature to deliberate upon, discuss and approve every details of legislation, which may be necessary for proper administration. The need therefore, to meet unforeseen contingencies, the requirement of flexibility and, on occasions, the very technicality of subject matters make delegation by Legislature of subsidiary or ancillary powers to subordinate authorities a practical necessity. In the nature of things, what the legislature does, and can do, is to lay down the broad policy and principles of a piece of legislation leaving it to the executive to frame, in conformity with those principles, formal and procedural details of that measure in the form of statutory instruments. Such situation where legislature confers the power on an extraneous authority other than the sovereign power to make rules and regulations to carry out the legislative policy is regarded as subordinate or ancillary legislation. In other words, the expression 'subordinate legislation'

means the act of making statutory instruments by a body subordinate to the legislature and in exercise of the power, within specific limits, conferred by the legislature.

Need to have control over Subordinate Legislation

2. Though Subordinate Legislation is now universally accepted as 'inevitable and indispensable', it is generally agreed that the tendency to delegate to the Executive the legislative powers is dangerous. Political scientists and others interested in the subject have felt that the concerned departments or the authorities to whom the ancillary legislative powers have been delegated, regulate matters of substantive nature which may closely affect the rights and interests of the citizens. In certain circumstances, people may be denied liberties by the administrators who are armed with legislative powers. Another risk inherent in the system of subordinate legislation is that officials in their zeal to achieve a particular objective may impose an undesirable burden on citizens by requiring them to comply with various conditions and formalities which might be restrictive of individual rights and freedom. Such tendencies strengthen the bureaucracy and result in undesirable complexities and difficulties. Two pertinent questions, therefore, crop up. First, how much power should be delegated by the Legislature to the subordinate authorities? And second, what restraints or safeguards should be imposed upon the authorities exercising delegated legislative powers? Today, the problem is not

about the desirability or otherwise of delegated legislation but it is with regard to the control and safeguards which can be introduced to ensure effective parliamentary control over subordinate legislation so that the powers conferred are not abused or misapplied.

Parliamentary control over Subordinate Legislation

3. Parliament has the inherent right to see that the powers delegated by it to make rules, sub-rules, regulations, bye-laws, etc., have been exercised in harmony with the terms of the statute delegating such powers and also that they are in accordance with the general principles of delegation. It has also the right to see that rule-making powers conferred by the Constitution, which are essentially of a legislative character, are properly exercised by the Executive. Parliamentary Control over Subordinate Legislation is exercisable in several ways. First, the present statutes often require that the rules, regulations, orders, etc., made by the subordinate authorities be laid before Parliament. Second, there are other methods of control which may be resorted to by the members of the Legislature themselves. These methods, *inter alia*, include (i) questions to a Minister at any time and on any subject, (ii) motion of censure to be moved on the Minister-in-charge of implementation of any statute, and (iii) debate on a subject relating to subordinate legislation. These devices, however, do not always function satisfactorily and, therefore, need to be supplemented by special

committees in the legislative bodies to watch over the exercise of delegated legislation and to report accordingly.

Historical Background of Committee on Subordinate Legislation, Lok Sabha

4. The need for having a separate Parliamentary Committee for the purpose was felt when for the first time Dr. B.R. Ambedkar, the then Law Minister made a suggestion in the Provisional Parliament, during the Budget Session held in 1950 that there should be a Standing Committee of the House to examine delegated legislation. In pursuance of the suggestion made by Dr. B.R. Ambedkar, a proposal for setting up of a Committee on Subordinate Legislation was made and relevant rules were drafted which were adopted by the Rules Committee of the House at its sitting held on 24 April, 1951. However, it took some time to materialize the proposal and the first Committee on Subordinate Legislation of the Lok Sabha comprising ten members was constituted on 1 December, 1953 to scrutinize and report to the House whether the powers to make regulations, rules, sub-rules, bye-laws etc. conferred by the statute or delegated by Parliament are properly exercised within limits set. Later, on 9 January, 1954, the strength of the Committee was raised to fifteen by amending the relevant rules. The Committee have been constituted under Rules 317-322 of the Rules of Procedure & Conduct of Business in Lok Sabha and Directions 103-108 of Directions by the Speaker, Lok Sabha.

Composition and Term of the Committee

5. The Committee shall consist of not more than fifteen members who shall be nominated by the Speaker provided that a Minister shall not be nominated a member of the Committee, and if a member, after nomination to the Committee is appointed as a Minister, such member shall cease to be a member of the Committee from the date of such appointment. The term of office of the Committee is one year from the date of its appointment. Committee on Subordinate Legislation is constituted in the beginning of a new Lok Sabha and then reconstituted annually.

Functions of the Committee

6. The functions of the Committee on Subordinate Legislation are to scrutinise and report to the House whether the powers to make regulations, rules, sub-rules, bye-laws etc. conferred by the Constitution or delegated by Parliament are being properly exercised within such delegation.

Procedure followed by the Committee

(i) Examination of Orders

7. The Committee on Subordinate Legislation examine all Regulations, Rules, Sub-rules, Bye-laws etc. commonly known as 'Orders', whether laid on the Table of the House or not, framed in pursuance of the provisions

of the Constitution or a statute delegating power to a subordinate authority, to make such Orders on the grounds laid down in rule 320 of the Rules of Procedure and Conduct of Business in Lok Sabha, which is given as under:

“320. After each such Order referred to in rule 319 is laid before the House, 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 matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
- (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 India 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 its publication or in laying it before Parliament; and
- (ix) whether for any reason its form or purport calls for any elucidation.”

(ii) Examination of Bills

8. The Committee also examine provisions of Bills which seek to delegate power, to make ‘Orders’, or amend earlier Acts delegating such powers, with a view, to see whether suitable provisions for the laying of the ‘Orders’ on the Table of the House have been incorporated therein. However, the procedure for examination of the Bills is the same as in the case of ‘Orders’.

(iii) Examination of Bills Referred to Committee by Speaker

9. The Speaker may also refer Bills containing provisions for delegation of legislative powers to the Committee and where a Bill is so referred, the Committee shall examine the extent of such powers sought to be delegated; and where powers are sought to be delegated

to State Governments or other authorities for bringing into operation any subsidiary provisions or to make any further rules or regulations, the necessity for such delegation as well as the extent and manner in which such power shall be exercised by the subordinate authorities concerned.

Where the Committee are of the opinion that the provisions contained in the Bill delegating legislative powers should be annulled wholly or in part, or should be amended in any respect, it may report that opinion and the grounds thereof to the House before the Bill is taken up for consideration in the House.

Working of the Committee

10. During the course of scrutiny of the rules, regulations and orders, if any points in regard to exercise of rules making power by the subordinate authority arise, clarifications are sought from the concerned Ministry/ Department. The matter is then placed before the Committee, indicating the points referred and the Ministry's comments thereon, in the form of a Memorandum, giving details of the provisions objected to and the grounds of objection. The Committee consider the Memorandum and come to its own conclusion. If it is considered necessary, the representatives of the Ministry are called to appear before the Committee to be heard in person for seeking further elucidations. The observations

and recommendations of the Committee on various points scrutinized by it find place in its reports.

The Committee also examine and scrutinize representations having a bearing on the rules and regulations and other delegated legislation, which are presented to it by associations, institutions and private bodies. The Committee takes oral evidence of the representatives of such associations and institutions and seek clarifications on the points mentioned in the representations and also seek necessary clarifications from the departments concerned before making its objections or recommendations.

Study Tour

11. During consideration of any rule/regulation or bye-law etc. commonly known as 'Order' if the Committee feel that an on-the-spot study visit should be undertaken of a particular organisation to gain first hand information about the application of 'Order', the Committee may, with the specific approval of the Speaker, undertake tour of the organisation concerned.

Reports

12. The Committee present its Reports to the House from time to time. 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. Further, if the Committee are 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. The Speaker may issue such directions as may be considered necessary for regulating the procedure in connection with all matters connected with the consideration of any question of Subordinate Legislation either in the Committee or in the House.

On the recommendations contained in the reports of the Committee, the Government is required to take action within six months and keep the Committee informed of the action taken or proposed to be taken in each case. The Action Taken by the Government on the recommendations/observations of the Committee are examined and included in the Action taken Report which is also presented to the House.

Important recommendations/observations made by the Committee on Subordinate Legislation

13. Some of the important recommendations/observations made by the Committee are as under:

- (i) Provision of Rule 70 of the Rules of Procedure and Conduct of Business in Lok Sabha are mandatory and therefore compliance therewith should invariably be made in case of every Bill

which involves delegation of legislative power to the Central Government or to any other authority.

- (ii) Ordinarily, rules should be framed under an Act as soon as possible after its coming into force and in no case this period should exceed six months.
- (iii) As far as possible, the use of complicated language in the rules should be avoided. Rules should be specific and definite. The use of vague expressions (like 'unreasonable large quantity'), which may be interpreted differently by different persons, is to be avoided.
- (iv) In cases where the rules are required to be published in the draft form, a period of not less than 30 clear days should invariably be given to the public to send their comments/ suggestions on the draft rules.
- (v) 'Orders', required to be laid before the House, should be laid within a period of 15 days after their publication in the Gazette, if the House is in session. And if the House is not then in session, the 'Orders' should be laid on the Table as soon as possible (but within 15 days) after the commencement of the following session, whenever, 'Orders' are laid after an

inordinate delay, an explanatory note giving the reasons for such delay should be appended thereto.

- (vi) All rules framed by Government, pursuant to Constitutional or statutory provisions, should invariably be published in the Gazette for public information.
- (vii) Like rules, regulations should also be laid before Parliament and there should be a provision to this effect in the relevant statutes.
- (viii) When the principal rules are required to be laid before Parliament, all statutory orders made under the rules should also be laid on the Table.
- (ix) Whenever rules are laid on the Table of the House, a Statement of Objects and Reasons and also explanatory notes on the rules should also be appended thereto. When new rules amending the original rules are laid on the Table the relevant extracts of the original rules sought to be amended should also be attached to amending rules.
- (x) Only matters of procedure and details should be spelt out through Subordinate Legislation. Substantial matters should, more appropriately, be dealt within the Act itself.

- (xi) No charges should be levied unless there is an express authorisation therefor in the parent law.
- (xii) The power to impose fees by rules or bye-laws should expressly be given in the parent Act.
- (xiii) The provision to recover dues of excise duty as arrears of land revenue, being in the nature of an extreme remedy, is a substantive provision for which a specific authorisation must be made in the Act itself rather than in the rules framed thereunder.
- (xiv) Retrospective effect to Subordinate Legislation cannot be given without an express authorisation therefor in the parent Act. Even the cases where the Government has the power to give effect to Subordinate Legislation such powers should be exercised only in unavoidable circumstances, and the Rules/Regulations framed thereunder should in each case be accompanied by an explanatory note or memorandum affirming that no one was likely to be adversely affected as a result of retrospective effect given thereto.
- (xv) Rules should not be so framed as to cause an injustice.

- (xvi) Rules should conform to the principles of natural justice. Conferring the right of being heard to the party adversely affected by a decision of the Executive, recording in writing the reasons for such decision, and communicating the same to the party concerned are the basic requirements of natural justice.
- (xvii) When a right of appeal has been given to an aggrieved person, the right should not be just illusory. Some reasonable time limit for filing an appeal should be provided.
- (xviii) Some safeguard should be imposed before sub-delegation is authorized to another functionary.
- (xix) Having regard to the fact that the manner of filling vacancies and principles of determining seniority are basic ingredients of any service rules, these should be incorporated in the rules and not left to be determined through executive instructions.
- (xx) Relaxation of rules should be with respect to a class or category of persons and not to an individual, so as to obviate the possibility of discrimination among persons similarly placed. Further, in case an exemption provision is incorporated in rules, it should provide for

reasons to be recorded in writing before grant of an exemption.

- (xxi) In cases where power to conduct searches/seizures is vested in officers, the minimum rank of the officers empowered to exercise such a power should be specified in the rules. Further, safeguards like presence of witnesses, preparation of inventories and giving copies thereof to the persons concerned should be provided.
- (xxii) In cases of recruitment of Group 'A' and Group 'B' posts, the relevant recruitment Rules should contain provision regarding consultation with the Union Public Service Commission.
- (xxiii) The provisions of extreme nature such as service of orders summons or notices etc. should not form part of the rules. If absolutely necessary, these should be provided for in the parent Act.
- (xxiv) The Communications addressed by the Committee should be dealt with the concerned Ministry/Department at a sufficiently high level and replies thereto should be signed by senior officers not below the rank of Deputy Secretary.
- (xxv) In cases where the rules/regulations/bye-laws are published in draft form for inviting

comments/suggestions from the public, those should be finalised and notified in final form within a period of 3 months after the receipt of comments/suggestions.

[The constitution and working of the Committee on Subordinate Legislation is governed by Rules 317-322 of the Rules of Procedure and Conduct of Business in Lok Sabha and Directions 103-108 of the Directions by the Speaker, Lok Sabha.]

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PREFACE

This Abstract is part of the Parliamentary Procedure Abstract Series and describes the procedure regarding Committee on Subordinate Legislation. It is based on the Rules of Procedure and Conduct of Business in Lok Sabha, the Directions issued by the Speaker under Rules of Procedure, past precedents and conventions followed by the Committee from time to time. It is intended to serve as a handy guide for ready reference.

The information contained in this Abstract is, however, not exhaustive. It will, therefore, be prudent to refer to and rely on the original sources for full information.

NEW DELHI

Secretary General