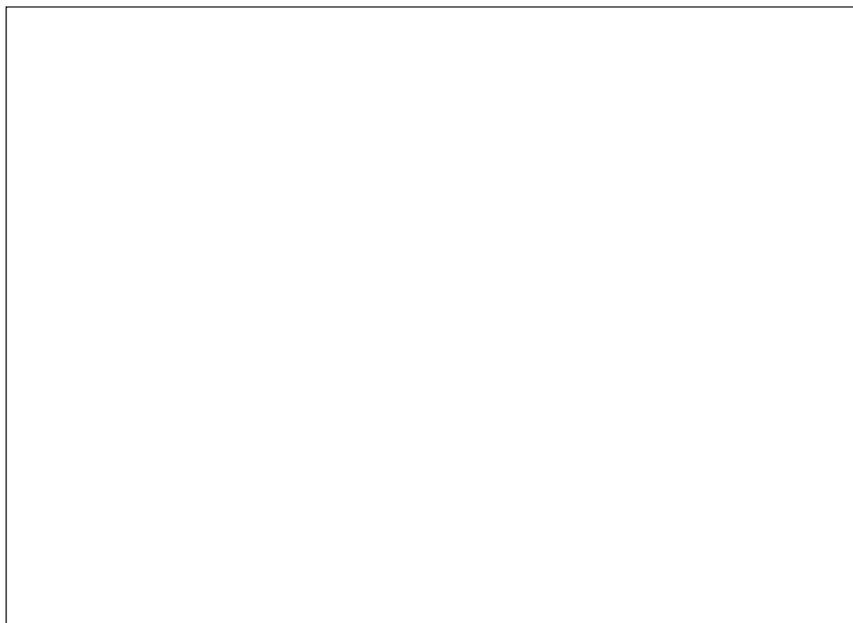




RAJYA SABHA
PRACTICE & PROCEDURE SERIES

13

**COMMITTEE ON SUBORDINATE
LEGISLATION**



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LEGISLATION**

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PREFACE

This booklet is part of the Rajya Sabha Practice and Procedure Series which seeks to describe, in brief, the procedure and functioning of the Committee on Subordinate Legislation of Rajya Sabha. It is based on the Rules of Procedure and Conduct of Business in Rajya Sabha and some of the important Reports submitted by the Committee to the House from time to time. The booklet is intended to serve only as a handy guide for ready reference. For full and authentic information original sources may be referred to and relied upon.

New Delhi
February, 2005

DR. YOGENDRA NARAIN
Secretary-General

COMMITTEE ON SUBORDINATE LEGISLATION

Introduction

Subordinate legislation is the legislation made by an authority subordinate to the legislature. According to Sir John Salmond, "Subordinate legislation is that which proceeds from any authority other than the sovereign power and is, therefore, dependent for its continued existence and validity on some superior or supreme authority."^{*} Most of the enactments provide for the powers for making rules, regulations, bye-laws or other statutory instruments which are exercised by the specified subordinate authorities. Such legislation is to be made within the framework of the powers so delegated by the legislature and is, therefore, known as delegated or subordinate legislation.

Necessity for subordinate legislation

The need and importance of subordinate legislation has been underlined by the Supreme Court in the *Gwalior Rayon Mills Mfg. (Wing.) Co. Ltd. v. Asstt. Commissioner of Sales Tax and Others*^{**} thus :

Most of the modern socio-economic legislations

^{*} John Salmond: *Jurisprudence*, 9th edition, London, Sweet & Masewell Limited, 1937, p. 210.

^{**} *All India Reporter* 1974 SC 1660 (1667).

passed by the legislature lay down the guiding principles and the legislative policy. The legislatures because of limitation imposed upon by the time factor hardly go into matters of detail. Provision is, therefore, made for delegated legislation to obtain flexibility, elasticity, expedition and opportunity for experimentation. The practice of empowering the executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare State.

In modern times, it is not always possible for the legislatures to make laws providing every detail. In view of newer areas emerging, law-making today has become not only time consuming but also an increasingly complicated and technical affair. What a legislature can possibly do and actually does is that it lays down the policy and purpose of the legislation and leaves it to the executive, experts and technocrats to provide for working details within the framework of the enactment by way of rules, regulations, bye-laws or other statutory instruments. That is why, delegated legislation is increasingly assuming an important role in the process of law-making, comprising an important component of legislation. Powers have also been conferred under various provisions of the Constitution of India on the different functionaries to frame rules, regulations or schemes dealing with various aspects.

Nature of subordinate legislation

'Subordinateness', in subordinate legislation is not merely suggestive of the level of the authority making it but also of the nature of the legislation itself. Delegated legislation under such delegated powers is ancillary and cannot, by its very nature, replace or modify the parent law nor can it lay down details akin to substantive law. There are instances where pieces of subordinate legislation which tended to replace or modify the provisions of the basic law or attempted to lay down new law by themselves had been struck down as *ultra vires*.

Control of legislature on delegated legislation

While in the context of increasing complexity of law-making, subordinate legislation has become an important constituent element of legislation, it is equally important to see how this process of legislation by the executive under delegated powers, can be reconciled with the democratic principles or parliamentary control. Legislation is an inherent and inalienable right of Parliament and it has to be seen that this power is not usurped nor transgressed under the guise of what is called subordinate legislation.

Committee on Subordinate Legislation

Amongst the mechanisms evolved by the legislature to exercise control over the delegated legislation, the

most important is the constitution of the Committee on Subordinate Legislation. It is this Committee of the legislature which examines if the powers conferred by the Constitution or delegated under an Act passed by the legislature have been duly exercised and are within the conferment or delegation, and not beyond. It has to see that delegated legislation does not transgress into areas not prescribed for it, and also that it does not venture to intrude into the sphere which is the sole concern of the legislature itself.

Committee on Subordinate Legislation of Rajya Sabha

To scrutinise and ensure whether powers to make rules, regulations, bye-laws, schemes or other statutory instruments conferred by the Constitution or delegated by Parliament have been properly exercised within such conferment or delegation, a Committee called the Committee on Subordinate Legislation has been constituted under Rules 204-206 of the Rules of Procedure and Conduct of Business in Rajya Sabha.

Constitution of the Committee

Rajya Sabha Committee on Subordinate Legislation was first constituted in 1964. The Committee consists of fifteen members including the Chairman who is nominated by the Chairman, Rajya Sabha. The Committee holds office until a new Committee is

nominated. Normally, the Committee is re-constituted every year. The Committee has till the conclusion of the 200th Session of Rajya Sabha presented 151 Reports.

Functions of the Committee

Rule 209 of the Rules of Procedure and Conduct of Business in Rajya Sabha lays down the functions of the Committee thus :

After each rule, regulation, bye-law, scheme or other statutory instrument (hereinafter referred to as the 'order') framed in pursuance of the Constitution or the legislative functions delegated by Parliament to a subordinate authority and which is required to be laid before Parliament, is so laid before the Council, the Committee shall, in particular consider :

- (1) whether the order is in accord with the provisions of the Constitution or the Act pursuant to which it is made;
- (2) whether the order contains matter which in the opinion of the Committee should more properly be dealt within an Act of Parliament;
- (3) whether the order contains imposition of taxation;
- (4) whether the order directly or indirectly bars the jurisdiction of the court;
- (5) whether the order gives retrospective effect to any

of the provisions in respect of which the Constitution or the Act does not expressly give any such power;

- (6) whether the order involves expenditure from the Consolidated Fund of India or the public revenues;
- (7) whether the order appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
- (8) whether there appears to have been unjustifiable delay in its publication or laying the order before Parliament; and
- (9) whether for any reason the form or purport of the order calls for any elucidation.

Considering the scope of its functioning under the provisions contained in Rule 209, the Committee on Subordinate Legislation of Rajya Sabha found that only such orders as were required to be laid before Parliament and were so laid before the Council could be examined by it and fell within the purview of scrutiny of the Committee. The Committee, however, felt that it should have the power to scrutinise not only the rules, regulations, bye-laws and statutory instruments, generally termed as 'orders' as are laid on the Table but all instruments of subordinate legislation in whatever form, whether framed in exercise of the powers conferred

by the Constitution or delegated by Parliament and irrespective of whether they are laid before the Council or not. The Committee accordingly approached the Chairman for necessary directions.

The Chairman, accordingly, issued a direction as follows :

- “(1) The Committee on Subordinate Legislation may examine all ‘orders’ whether laid before the Council or not, framed in pursuance of the provisions of the Constitution or a statute delegating power to a subordinate authority to make such orders;
- (2) The Committee may examine provisions of Bills which seek to —
 - (i) delegate powers to make ‘orders’, or
 - (ii) amend earlier Acts delegating such powers, with a view to see whether suitable provisions for the laying of the ‘orders’ before the Council have been made therein.
- (3) The Committee may examine any other matter relating to an ‘order’ or any question of subordinate legislation arising therefrom.”

The principal function of the Committee is to scrutinise the various rules, regulations, bye-laws, schemes and other statutory instruments (briefly referred to as ‘orders’) framed in exercise of the powers conferred by the

Constitution or delegated under the various Acts of Parliament to see whether the ‘order’ is in accord with the provisions of the Constitution or the Act, pursuant to which the same is made and to report to Rajya Sabha in regard thereto. The Committee has to satisfy itself whether the ‘order’ is *intra vires* of the Constitution or the respective Act of Parliament. In case any order is found not to be in accord with the provisions of the Constitution or of the Act whereunder it is made, the Committee recommends that the respective rules and regulations be suitably amended.

The Committee also sees to it that the orders issued in exercise of the powers of delegated legislation do not take the place of an Act of Parliament nor do they seek to amend or add to the basic law.

Besides the functions as enumerated in Rule 209, the Committee goes into matters, where the rules, regulations, bye-laws and other statutory instruments as contemplated in the Constitution or envisaged in an Act of Parliament have not been framed or the framing thereof has been inordinately delayed. The Committee also monitors the timely laying of notifications containing the subordinate legislation.

How the Committee functions

During the course of scrutiny of the rules, regulations and orders, if any points in regard to exercise of rule-

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 considers the Memorandum and comes 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 scrutinised by it find place in its reports.

The Committee also examines and scrutinises 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 hears the representatives of such associations and institutions and seeks clarifications on the points mentioned in the representations and also seeks necessary clarifications from the departments concerned before making its observations or recommendations.

The Committee, sometimes, undertakes on-the-spot study visits with a view to ascertaining first-hand knowledge of facts mentioned in rules, regulations and representations. The Committee presents its report to

Rajya Sabha from time to time. The Committee has its own procedure for pursuing its recommendations and ensuring implementation thereof.

Important observations, recommendations and directions by the Committee on Subordinate Legislation, regarding its working

The Committee has made its observations or recommendations on certain matters which are of a permanent character and are frequently referred to. These recommendations in a way serve as guidelines to the Ministries and Departments of the Government in the matter of delegated legislation.

The Committee in its Tenth Report has recommended that rules/regulations required to be made under a statute should be made as soon as possible and in no case later than six months from the date on which the statute comes into force. As a follow up to this, the Committee, in its Forty-seventh Report, recommended that if it was not possible for a Ministry to adhere to this time schedule, it should intimate to the Committee the reasons therefor and seek extension of time for completing the rule making process. Similarly, the Committee in its Tenth Report has recommended a standard laying formula for incorporation in all existing as well as new legislations. In its Seventy-fifth Report, the Committee has recommended to the Government to lay all orders made in pursuance of powers delegated

by Parliament before Parliament so as to enable members of Parliament to move amendment or modification to such orders including a motion for their annulment. The Committee has also recommended in its Eighty-second Report the laying of all rules framed under article 309 of the Constitution of India. The Committee in its One Hundred and Thirty-first Report has recommended that orders required to be laid before the House should be laid : (i) if the House is not in Session, during the Session immediately following the date of publication of the Order in the Official Gazette and (ii) if the House is in Session, on the date of the publication of the Order, during its continuance and in case the time lag between the date of publication and the date of the closing of the Session is less than 15 clear days, before the expiry of the Session immediately following the said Session. Similarly, there are recommendations of the Committee to ensure prompt action by Ministries on its recommendations as well as avoiding delay in replying to communications on its behalf.

The Committee has taken a serious view when the recommendations made by it have not been implemented by the Ministries concerned or when no reasonable explanation has been given to the Committee for non-implementation of the recommendations.

As mentioned above, one of the functions of the Committee is to examine whether a rule gives retrospective effect to any of the provisions in respect of

which the parent Act does not give any such power. Even when a statute empowers giving of retrospective effect to a rule made thereunder, the concerned rule should be accompanied by an explanatory memorandum setting therein the reasons and circumstances which necessitated the giving of retrospective operation and also certifying that the interests of none are adversely affected by such retrospective operation of the rules. In cases where necessary explanatory memoranda and certificates are not appended to such rules as have been given effect to retrospectively, the Committee insists that the same be appended to the respective rules.

After its constitution in 1964, the Rajya Sabha Committee on Subordinate Legislation over the years has in its own sphere become an effective instrument for exercising parliamentary control over executive action. In scrutinising rules, the Committee has always ensured that no hardship is caused to the citizens governed by the rules. The Committee also keeps a watch on the executive so that it does not exercise arbitrary, unguided and unspecified discretion under any rule. The Committee has also sought to ensure that the jurisdiction of the courts is not ousted directly or indirectly by the application of rules and regulations and that no fees are levied which are not duly authorized by law. Whenever the Committee comes across such instances, it immediately brings them to the notice of the authorities. The Committee has always insisted that whenever

discretionary powers have been conferred on an authority, guidelines for the exercise of those powers should be laid down in the rules. Where the rules seek to arm the authorities with powers which are of a substantive character, the Committee is quick to point out that such powers should more appropriately be sought from the statute rather than from subordinate legislation.

The Committee examines orders and makes its recommendations and while doing so it never acts with hostility towards the executive nor does it ever adopt a stance of confrontation. The Committee always takes a balanced view of things while making its recommendations and gives due consideration to the viewpoint of administration.

The Committee on Subordinate Legislation of Rajya Sabha functions in an extremely cordial atmosphere. The members discuss the issues dispassionately and above party-lines. The recommendations of the Committee are unanimous and are influenced only by considerations of public welfare. The Committee is non-partisan and quasi-judicial in its approach.