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COMMITTEES ON SUBORDINATE LEGISLATION — PARLIAMENTARY
CONTROL OF DELEGATED LEGISLATION
IN INDIA

By

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The Council of States (Rajya Sabha) and the House of the People (Lok Sabha) have their Committees on Subordinate Legislation. The Council constituted its first Committee as late as on 30 September, 1964. The Committee of the House of the People was, however, constituted earlier on 1 December, 1953 on acceptance by the House of a suggestion in this respect made by Dr. B.R. Ambedkar on 11 April, 1950. The House Committee has over the last eighteen years been functioning. The Committee's have settled the techniques of parliamentary control of delegated legislation. Therefore, it is time that an appraisal in this respect be attempted herewith.

The Council Committee:

The Committee were constituted in accordance with Rule 204 of the Rules of Procedure and Conduct of Business in the Rajya Sabha by the Chairman on 30 September, 1964. They

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have functioned continuously with periodic reconstitution. They consist of 15 members including their chairman, all nominated by the Council Chairman.

In their first meeting held on 28 November, 1964, the Committee discussed the scope of their activities and functions and procedure. They felt that they should have power to scrutinise all statutory instruments whether they are laid before the Rajya Sabha or not as also the Bills containing provisions regarding delegation of legislative power since after their constitution. In particular, they decided to examine the statutory rules and orders to ensure their consistency with the Fundamental Rights. They refer and communicate with any appropriate Ministry; examine the contentions, expresses their own views and make recommendations in respect of any statutory Order (statutory instrument). They may recommend that a rule should be amended, or be published in the Official Gazette. They regard "laying before Parliament" as one of the most effective ways of exercising control on delegated legislation; and insist that there should not be any, inordinate or unjustifiable delay in 'laying'. They decided that not 'laying' within 15 days after their publication if the House is sitting, or after the commencement of the next session, as the case may be, should be considered unjustifiable. They may bring to the attention of the Council, for instance, delay in laying a copy of the rules. In their very First Report of 15 March, 1966 it noted 29 cases of unjustifiable delay.

The Committee submit reports to the Council containing their observations on matters arising out of the examination of the 'Orders' which in their opinion needed to be brought to the notice of the Council and their recommendations. They note the action taken, or proposed to be taken by the Government on their recommendations contained in earlier reports and minutes of their sittings.

The House Committee. - The Committee consist of not more than fifteen members nominated by the Speaker.² No member of the Council of Ministers is nominated to the membership; and a sitting member when appointed a Minister ceases to be a member.³ The members are appointed for one year. One of the Committee members is appointed their Chairman; but if the Deputy Speaker is a member, he becomes their ex officio Chairman. 4

The Committee meetings are held in camera on such days and at such hour as the Chairman may fix within the precincts of the Parliament House (Sansad Bhawan).⁵ They can meet even when the House is sitting, but the Chairman must suspend the proceedings if a division is called in the House to enable the members to vote.⁶ Five members including the Chairman make the quorum.⁷ When the quorum is not made, the Committee sitting is adjourned to some future day. If the Committee does not meet for want of quorum consecutively two times, the Chairman reports the fact to the Speaker who can discharge a member for being absent from two or more consecutive sittings. All questions at a sitting are determined by simple majority vote; but in the event of equality of votes on any matter the Chairman has a second or a casting vote. 8

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1. First Report (1966) p. 7.
 2. R. 317.
 3. R. 318.
 4. R. 258.
 5. R. 267.
 6. R. 266.
 7. R. 259.
 8. R. 261-262.

Generally, the Committee arrive at their conclusions and make recommendations unanimously; and party considerations do not affect their deliberations.

On 7 December, 1954 the Speaker, Shri Mavlankar addressed the Committee and spoke of the importance and scope of their functioning. 9 They were intended to ensure, he said: "necessary parliamentary supervision and control on the exercise of the rule making powers given to Government by Parliament through various statutes". Through them Parliament kept the rule making power by the Government "within due limits and on proper lines", and directed its exercise in proper channel. They were intended to minimise the risk to parliamentary legislative prerogative inherent in "wrong or bad" use of the delegated power by the Government. Though the duties and functions were laid down in the Rules, yet the Speaker said, there was scope for improvement in the Rules in this respect. The Committee were not intended to work as an opposition to the Government or the administration. They were not intended to work on party considerations too. Instead they were conceived as a body intended "to examine the questions before them in a non-partisan manner" and to discharge an important duty on behalf of the entire House. They did not review policy, that was already laid down in the enactment. They only reviewed the follow up action of the Government and the statutory rules, orders, regulations notifications etc. instrumental in carrying out the legislative policy. They were a means to guard against usurpation authorities of the legislative policy by the Government, or abuse or excessive use of power given it. The objectives and purposes set by Shri Mavlankar, have ever since inspired the Committees of the successive Lok Sabhas. Shri N.C. Chatterji, the Chairman of the Committee of the Fourth Lok Sabha for 1968 reiterated those purposes. He said:

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9. Address: (1955) Lok Sabha III. Appendix I.
 10. Chairman's address 11 April, 1967 to (1968) Lok Sabha I Appendix I. p. 23.

"We shall have to see whether the authority delegated by Parliament in the Statutes has been properly exercised to the extent permissible and in the manner envisaged. We shall be making our reports to Lok Sabha advising it for taking any action which may be deemed necessary".

"But in discharging our duties, I should like to make it dear, we would not be acting in hostility to the Executive. Our objective is implementation of the will of Parliament and our efforts would be complementary. The executive ought to comply with the wishes of the Parliament and frame rules and regulations in exercise of the authority vested in them by law. Sometimes in their eagerness to discharge their duties more expeditiously and effectively the Executive may commit mistakes. We have to keep them on the right track. We are the friendly critics of the Executive and not their enemies".

The committee scrutinises rules, sub rules, regulations and bye laws framed in pursuance of the Constitution by; or under the legislative delegation by Parliament to the Government and subordinate administrative authorities.

The Committee laid stress both on pre-legislation and post legislation control of the rule making power. The first stage control intended to rib the to in the bud. It stresses on prevention as being better than cure afterwards. The limitations of the rule against delegation of essential legislative functions are stressed. The Committee recommended that close attention should be paid to the delegation clause right with the drafting stage and introduction of the Bill in Parliament.

The Government intentions in the matter should be spelled out clearly in a Memorandum on Delegated Legislation appended to the Bill. It should indicate the authority which would make rules, if the Bill is passed into a law. The scope of delegation should be explained; and it should be made clear whether the power asked for is of normal character and is not excessive. The clause should be scrutinised by the select committee, and latter by each House. Parliament should be reluctant to entrust power to the Government in excess to what is absolutely necessary. The words of the clause should be simple and plain benefit of ambiguity and vagueness.

The post legislation scrutiny should be with a view to ensure that delegated legislation falls four-square within the statutory limits. This indicates ultimate parliamentary authority, and establishes the condition of the legislative sanction. The imminence of parliamentary vigilance and control impells the Government to exercise delegated power responsibly, and subject to the limitations of the legislative authority. In the absence of parliamentary control the dangers of irresponsibility cannot altogether be eliminated. The Committee is functionally more effective only in relation to the second stage of scrutiny of the statutory instruments - statutory orders.

The rules should be framed with a view to carry into effect the statute under which they are framed, and provide and prescribe many incidental and ancillary things which the Legislature thinks can better be done by the Government. Without the statutory rules, legislation is incomplete. Often the legislative policy is clear, but it cannot be given effect to unless the rules prescribing the details, administrative procedural norms, forms etc. are made. Without the rules the

the statute is but a skeleton the rules give it flesh and form. It is desirable that they be framed as soon as possible after the Act comes into force. Whenever the Committee noticed that inordinate delay was made in framing the rules it was "not clear to the Committee how the Acts which provided for certain matters to be regulated by rules, were administered in the absence of any rules". They considered the question whether it was desirable to impose any time limit within which this should be done. After considering the views of the Government in the matter the Committee observed as follows:-

"... Ordinarily rules should be framed under an Act as soon as possible after the commencement of the Act and in no case this period should exceed six months. If no rules are framed within a reasonable period after the commencement of the Act, the Committee will take up the matter with the Ministry concerned and report to the House cases where it is felt that undue delay has occurred in framing the rules." 12

Citation of statutory authority:

Delegated legislative power should be exercised in accordance with the statutory authorisation. To ensure this it is incumbent of the rule-making authority to cite in the statutory instrument the specific statutory provisions "for the purpose of enabling all concerned to know under what precise authority the rules were made". Whenever the Committee noticed the non observance of this direction they referred the point to the Ministry concerned and asked for the reasons. e.g. The Ministry of Commerce and Industry did not cite

the relevant statutory provision of the Forward Contracts (Regulation) Act, 1952 in the SRO 179 of 1957. The Committee in this case as on certain other occasions emphasised "that Ministries should cite the sections of the parent Act in the preamble of all rules, regulations, bye laws etc. and amendments thereto issued or published by them." 13

Numbering and indexing:

It is but necessary that the rules be accessible. A person should be able to locate them, and refer to them. This can be made possible by a proper system of numbering of the SROs, GSOs, and SOs in the Official Gazette [the Gazette of India]. The Committee studied the system of numbering and publication of the statutory rules and orders in the 1956 and dealt with the whole thing in their Fourth Report presented to the Lok Sabha on 14 May, 1956. They found that these instruments lay scattered, having been published in five different sections of the Gazette and the system of their numbering lacked uniformity causing avoidable difficulty and confusion. They felt that it would be advisable if all the statutory instruments were centrally numbered year to year. The Government did not, however, find it practical to do so. Therefore, the Committee suggested an alternative system: publication of notifications containing rules and orders in proper part and section of the Gazette with distinctive prefixes and centrally regulated numbers e.g.

SROs of Ministries	..Part II.
Other than Defence	Sec. 3 [SRO(A)].
Defence Ministry SROs	Part II Sec. 4. SRO(B.)

13. Second Lok Sabha (1957)II para 8. See also Second Lok Sabha I para 76; and First Lok Sabha VI para 76.

The Committee also suggested that a monthly index of all the notifications followed by an annual consolidated index should be published and made available. 14

The requirement of proper indexing of Orders in the event of corrections and amendments in the rules framed earlier cannot be overstressed. Occasionally, the Committee pointed out that giving merely the file number was not sufficient. 15

Laying

The requirement of "laying" is stressed in the Constitution as also invariably by statutes. An ordinance promulgated by the President,¹⁶ a Proclamation of Emergency by him,¹⁷ or his Proclamation intended for supersession of a State Government,¹⁸ should be laid before each House of Parliament. The laying of statutory instruments containing rules, orders notifications etc. is ensured by, in the absence of any general statute on the pattern of the English Statutory Instruments Act, 1946, a specific provision in the statutes providing for delegation of legislative power. They are required to be laid "as soon as" after their publication in the Gazette. The Committee stressed that the Acts containing provisions for making rules etc. should lay down that such rules should be laid on the Tables of the Houses. The Government fully accepted the

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14. Lok Sabha IV 1956 X. 6 parās 37-38.
 15. Second Lok Sabha VIII 1960.
 16. Article 123(2)(a).
 17. Article 252(2)(c).
 18. Article 256(3).

direction and by means of amendment of even certain existing statutes got inserted clauses providing for laying e.g. Indian Tariff (Second Amendment) Act, 1957 inserted a clause for 'laying' in the Indian Tariff Act, 1934. The Ministry of Law of the Government of India framed certain provisions about the 'laying' clause which the Committee accepted in their Sixth Report to First Lok Sabha.¹⁹ In pursuance of their recommendation Bills should have contained a clause on the following lines:

"All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following".

This clause would permit modifications in the rules "during the session in which they are so laid or the session immediately following", even beyond the period of thirty days.' laying. The modifications made could be retrospective too and "affect the previous operation" of the rules. This could cause inconvenience to the administration as the modification could be made over a much longer period consummate with the time taken in two consecutive sessions. Therefore, the Government submitted to the Committee an alternative draft clause permitting modifications only within the period of 30 days during which the rules were laid, and modification could be affectuated only prospectively. The suggested model clause provided:

19. Paras 78-79.

Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

The Committee expressed no objection to the suggested course, but did not accept the proposed change and suggestion for curtailment of the period for modifications to the session in which they are so laid, or the session immediately following.

They emphasised frequently that 'Orders' should be laid on the Table without any loss of time following their Gazette publication, or as soon as possible after the commencement of the session preceding which they are made.²⁰ They suggested that they be laid within seven days after their publication if the House was sitting, or before expiry of seven days following commencement of the next consecutive session if made during a parliamentary recess.²¹ However, on practical considerations and the difficulties experienced by the Government agreed to fifteen days limit.

20. 1958 Second Lok Sabha III para 61.

21. (1957) Second Lok Sabha II para 32.

They depreciated that delay should have occurred in laying, and enlisted the 'Orders' in which delay was caused in an appendix of each of their several reports. They noticed that even the larger fifteen days' limit was not adhered to, and in a number of cases the delay involved was more than one year, and the amending SROs were often laid after two years of their issue. Occasionally, the Committee sought for the reasons, and enquired into the clarification given by the concerned Ministry. They dispelled the misunderstanding that where the original rules had been laid their amendments were not required to be laid. They stressed that "all rules" for this purpose included all subsequent amendments in them too. 22

Recommendations accepted by the Government

1. All rules and amendments to existing rules should be given short title both in the body and at the top, except when difficult.
2. The statutory instrument should contain an explanatory note giving the general purport of the rules/amendment, except when rules are simple and do not require any such note.
3. Whenever amendments are extensive the rules should be reprinted.
4. The rules should be made "as far as possible" by the use of simple language, avoiding complicated language.
5. The statutory rule making authority delegating legislative power should be specifically cited in the preamble to the statutory instruments.

Government views accepted by the Committee

The House Committee has a special role to play in the area of tax legislation. In view of the provision of Article 265 and the special legislative procedure established by Article 109/110 and Article 111 it is imperative that no tax should ever be levied on the authority of delegated legislation. The Committee has kept up this constitutional position and whenever necessary has pointed out that "if any taxation is sought to be imposed, it should be done in the Act itself and not by rules".²³ They have scrutinise the statutory instruments issued under the tax laws with particular case, and have insisted that the Government should refrain from issuing them when the House is ceased of their subject matter. For instance, the Government by a notification issued by the Ministry of Finance Government of India exempted hand made paper from excise duty in exercise of power delegated under the Excise Act, 1944 while the House was ceased of the Finance Bill, 1955 and which in terms of the Provisional Collection of Taxes Act, 1931 was in force providing for levy of the duty. The Committee said that the issue of notification under the given circumstance was not the proper exercise of the delegated power. They said:

"It is true that Government have the power of exemption and they can exercise the power. But, the Committee feel that Parliament also has a responsibility in the matter, namely, the responsibility for keeping watch over the Taxation policy of the Government. The question that arises in the circumstances is whether when a measure levying a duty on certain articles is pending in the House, it is at all proper for the Government to exempt any of those

23. 1955 III Lok Sabha para 8 p. 2.

articles from the duty without waiting for the views of the House on the measure. The Committee are also of the opinion that when a particular measure levying any duty is pending in the House, no action should be taken by way of exemption of an article from the proposed duty without seeking the prior approval of the House." 24

The Committee have expressed their disapproval over any rule making important change in tax policy e.g. withdrawal of exemption in respect of goods lost by theft where it was in existence for "some time". 25 They have also not favoured the giving of power to increase or levy a duty (export duty) on any article by empowering the Government to amend by notification in the Gazette the Second Schedule to the Indian Tariff Act, 1934.. They stressed that the power to levy a duty on an article by including it in the Schedule. They added that such an extraordinary power should be given to the Government only in regard to specific article, which should be exhaustively stated in the Schedule to the Act.

The Committee have emphasised that notifications issued under the tax law showed "invariably" by laid on the Table of the House and the Government in an accompanying note should specify their contents, nature of change made in the existing position, if any together with reasons therefore so that the House if necessary, raise a discussion on it.²⁶ They expressed the view that a notification once approved by the House should not be rescinded by issuing another notification without placing the latter notification on the Table of the House. 27

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24. (1956) IV Lok Sabha para 34-35.
 25. (1954) II Lok Sabha para 16-19.
 26. (1954) II Lok Sabha para 30 p. 9.
 27. (1955) III Lok Sabha paras 10-13 pp. 2-3.