CHAPTER II

PROCEDURAL SAFEGUARDS

Delegated legislation affects the interests of the public as intimately as, or perhaps more intimately than, legislative regulations. The code of conduct prescribed in statutory rules is enforceable by sanctions similar to those that are attached to laws directly emanating from legislatures. As mentioned earlier, in some cases even penal sanctions, ranging from three to seven years' imprisonment, are prescribed in India for violation of rules made under delegated authority.[1]

An administrative rule-making authority is not usually a representative body. Bulk of delegated legislation is made by departmental officials whose deliberations are not public and who are not subject to direct political controls. As Keeton observed: "They are civil servants, enjoying security of tenure during good behaviour, and they work remote from the light of public criticism."[2] There are, therefore, risks that the power of delegated legislation may be abused. This underlines the necessity of having adequate safeguards subject to which this power is to be exercised.[3] The problem is how to confine and control delegated legislation so that it may comply with elementary principles of law in a democratic society.[4] It is thus in the fitness of things that the rule-making process is given as much publicity, and be subject to as much popular criticism as the law-making process by legislatures.[5] It is further necessary that means be devised whereby interested persons may present their views, the facts within their knowledge and the dangers and benefits of alternative courses. We examine below certain procedures which aim at affording affected persons an opportunity to participate in the rule-making process.

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1. Ilbert, *Legislative Council proceedings*, (1886), p. 306.
2. Keeton, *The Passing of Parliament*, p. 66.
3. *Report of the Committee on Ministers' Powers*, (1932), p. 5
4. Mahajan J. in *In re Delhi Laws Act*, A.I.R. 1951 S.C. 332, 371.
5. Ilbert, *Legislative Council Proceedings*, (1886), p. 306 He emphasized the importance of subjecting the rules to the same kind of preliminary criticism as is applied to Acts of the Legislature.

I. Antecedent Publicity

In England the Rules Publication Act, 1893[1] provided for the antecedent publicity of subordinate legislation. S. 1 of the Act prescribed that where an Act authorised the making of statutory rules with the stipulation for their being laid before Parliament, at least forty days' notice should be given in the London Gazette (or in the Dublin Gazette in case of rules for Ireland) of the proposal to make rules, and of the place where copies of draft rules could be available. Any representation or suggestion made in writing by a public body during the forty-days period had to be considered by the authority proposing to make such rules. The Act made several exceptions to the above rule. The section applied only to those rules which were required to be submitted to Parliament. Again, the provision did not apply to certain named departments.[2] Further, S. 2 of the Act empowered to make, in cases of emergency, provisional rules with immediate effect which might remain in force until permanent rules were made. It sometimes happened that permanent rules were not issued at all or were made only after a considerable interval.[3] Finally, since 1893, exceptions to S. 1 were made in a number of cases by Acts conferring the power of making statutory rules.

The Committee on Ministers' Powers described the antecedent publicity provided for in S. 1 as "undoubtedly a safeguard of the highest nature."[4] It recommended the removal of "anomalous exceptions" to S. 1 so that it might apply to all rules required to be laid before Parliament. But the Statutory Instruments Act, 1946, which repealed the Rules Publication Act, 1893, did not re-enact a provision similar to S. 1. The government considered the retention of the procedure unnecessary inasmuch as a more effective method had been evolved in the practice of prior consultations with affected interests.[5]

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1. Law Reports, The Public General Statutes (56 & 57 Vict.) Vol. XXX, Chap. 66.
2. The Ministry of Health, the Board of Trade, the Revenue Department, the Post Office, and the Ministry of Agriculture in respect of rules to be made under the Contagious Diseases (Animals) Acts.
3. *Report, Committee on Ministers' Powers*, 1932, p. 46.
4. *Ibid.*, 66.
5. The opinion of the government is not universally shared. The abolition has been described as a "regrettable backward step" (Harry Street, *Delegated Legislation and the Public, Public Administration*, Vol. 27, p. 108) and "a valuable safeguard is thus abandoned" (Sieghart, *Government by Decree* (1950), p. 138). See also, Schwartz, *Law and the Executive in Britain* (1949), p. 138. The Lord Chancellor said in the

The U.S. Congress made statutory provision for giving antecedent publicity to proposed rules. S. 4 of the Administrative Procedure Act, 1946 requires the publication of general notice of proposed rule-making in the Federal Register. The notice shall include:

(i) a statement of the time, place, and manner of public rule-making proceedings;

(ii) reference to the authority under which rule is proposed; and

(iii) either the terms or substance of the proposed rule or a description of the subjects and issues involved.[1]

Further, it is declared that interested persons shall be afforded an opportunity to participate in the proposed rule-making through submission of written data, views or arguments, and that after consideration of all relevant material presented, the administrative agency shall incorporate in the rules a concise general statement of their basis and purpose.

The section expressly excludes the requirement of notice in the case of interpretative rules,[2] general statements of policy, rules of agency organization, procedure, or practice. Further, notice may be dispensed with in any situation in which the agency finds, for good cause, that such notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[3]

It appears that the publication of a complete draft of proposed rules can be dispensed with only if there exists some provision to bring to the notice of interested persons, at some stage before the rules go into effect, the actual terms in which they are framed, with further opportunity to make representations. Moreover, as we shall see below, in addition to the requirement of giving general notice, there are other highly developed procedure for allowing affected persons to participate in the rule-making process.

House of Lords:

We no longer promulgate the regulations or rules in the Gazette and wait for representations to be made. We go to the trade or interest concerned and deal with it by getting them round the table, hearing what they have to say, and then drafting the rules after obtaining their views. 139 H.L. Deb., 5 S., Col. 330.

1. An American District Court held the requirement for notice mandatory. See *American Air Transport Inc. Etal* v. *Civil Aeronautics Board et al.*, 98F. Supp. 660 (D.C. 1951).

2. Rules which do not receive statutory force.

3. The concerned agency is, however, required to incorporate a brief statement of reasons in the rules for not issuing the public notice.

Two other provisions in the Act need be read along with the requirement of general notice. First, S. 4(*c*) provides for deferring the effectiveness of all federal administrative regulations having statutory force until thirty days after the publication. Secondly, every agency is under duty to accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.[1] It is evident from the above that the American procedure unduly delays the statutory regulations from coming into operation.

In India though the practice of delegated legislation has been in vogue since 1836, no device was adopted till 1886 to enable interested persons to express their views on proposed rules. It was only during the regime of Sir Courtenay Ilbert as Law Member to the Government of India that an important innovation in the rule-making procedure took place. "It appeared to the Government of India", he said, "that in the case of legislation of this kind (i.e. subordinate legislation)—for it was legislation—it was as important as in the case of Bills that opportunity should be given for external unofficial criticism before the rules had been finally settled."[2] Such opportunity was offered by subjecting proposed rule-making to the condition of antecedent publication. But the condition was not made a general rule; it applied only to such cases as were expressly directed by the enabhng Act. The practice has since then been continued.

Usually the requirement of "antecedent publicity" is phrased in a set formula: "The Central Government may, subject to the condition of previous publication, make rules, etc." The General Clauses Act of 1897 details the necessary procedure."[3] And the procedure consists of two essential aspects: (*i*) publication of draft rules; and (*ii*) invitation of objections and suggestions.

(*i*) PUBLICATION OF DRAFT RULES

The authority having power to make rules is required to publish a draft, and not merely the substance, of the rules for the information of persons likely to be affected thereby. Where no specification is made in an enabling Act as regards the mode of publication of draft rules, it is left

1. Administrative Procedure Act, 1946, S. 4(*d*)
2. *Legislative Council Proceedings*, 1882, p. 463.
3. General Clauses Act, 1897, S. 23.

to the discretion of the rule-making authority to decide on it. Usually, the enabling Acts provide for the publication of rules in the official gazette.

(*ii*) INVITATION OF OBJECTIONS

Along with the publication of draft rules, notice is given to public intimating the date on or after which the draft will be taken up for consideration, and calling for suggestions and objections regarding the proposed rules. It will be a welcome move if the notices are also published in the newspapers. Any person, not necessarily a person directly affected, can make suggestions and objections with regard to the proposed rules. The rule-making authority is obliged to consider all such suggestions and objections,[1] though there is no duty on its part to accept any of the suggestions or objections or to give reasons for rejecting them.

There is no rule fixing the number of days for which notice has to be given; nor has there been evolved any consistent administrative practice in this matter. It varies from seven days to six months. Occasionally an enabling Act may itself fix the period.[2]

The procedure prescribed by an enabling Act for making rules thereunder must also be followed in all cases where such rules are sought to be varied, modified or amended.[3] With respect to the giving of the public notices of proposed rules S. 23 of the General Clauses Act differs from S. 4 of the (American) Administrative Procedure Act in one important respect. The latter is more flexible, for it does not insist on the publication of texts of the draft rules in all cases; publication of the substance of the proposed rules or description of subjects and issues involved may be sufficient. S. 23 of the General Clauses Act, on the other hand, requires the publication of draft rules in all instances.

It is to be noted, however, that the General Clauses Act provides for a statutory presumption which renders these procedural requirements no more than merely directory. Thus S. 23(5) of the Act states :

> The publication in the official gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

1. Where the rules are subject to the approval or concurrence of another authority, such authority should also consider the suggestions and objections referred to above.
2. Banking Companies Act, 1949, S.52(3), for example, requires a notice of six months.
3. General Clauses Act, 1897, S.21.

Accordingly, once a rule is published in the official gazette, it shall be conclusive proof that it was duly made. Being so, S. 4 of the Indian Evidence Act prohibits evidence being tendered to prove that a rule has not been duly made.[1] It may, however, be mentioned that the General Clauses Act was passed in 1897 by a legislature completely controlled by an executive appointed by a foreign government. No wonder therefore, that greater regard was paid to administrative convenience rather than to the rights of the subjects. But now there seems to be little justification for granting immunity from judicial review to rules which are required to be made according to the procedure prescribed by the said section. A suitable amendment in the Act is therefore desirable.

As to the practice in India of invoking the procedure outlined in S. 23 of the General Clauses Act not more than sixty central statutes existing until 1960 lay down the condition of giving antecedent publicity to the rules made thereunder. It is not possible to suggest exactly what considerations determine the inclusion in some enactments, and exclusion in others, of the condition of previous publicity. Is it possible to infer from the practice that the nature of the subject matter, such as, for instance, personal and property rights of the citizens, sought to be regulated by subordinate legislation has been the basis for this distinction? The practice does not lend support to such an inference.[2] Further, there is sufficient evidence to show that similar subjects have been treated differently. Thus, S.6 of the Central Tea Board Act, 1949, requires the previous publication of the rules framed thereunder whereas no such condition is laid down for the rules made under S. 48 of the Coffee Market Expansion Act, 1942. S. 6 of the Cotton Industry Statistics Act, 1926 and S. 12 of the Industrial Statistics Act, 1942, deal with similar problems; yet the former does not, and the latter does, require publicity of the rules made thereunder. Ordinarily, statutory regulations under labour enactments in India are required to be made on the condition of previous publicity, but without any apparent reason, no such condition is stipulated in S. 6 of the Mica Mines Labour

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1. *Akola Municipality* v. *Madhava Wasudeo* A.I.R. 1951 Nag. 464, 466
2. See, Defence of India Rules made under S. 2 of the Defence of India Act, 1939, or the Requisition and Acquisition of Immoveable Property Act, 1952, S. 22. But see, Public Debt (Central Government) Act, 1944, S.28 relating to government securities subjected to the procedure of antecedent publicity. Purely procedural matters under the Births, Deaths and Marriages Registration Act, 1888, S. 26, require antecedent publicity. See also, Tramways Act, 1886, S. 26.

Welfare Fund Act, 1946. The importance of the subject matter, too, has not been a decisive criterion.

It is necessary to point out that the procedure prescribed in S. 23 of the General Clauses Act is only applicable to rules, regulations or bye-laws. Delegated legislation appearing in other names such as orders, notifications or schemes, has rarely been subject to such a requirement and, where it has been, the procedure is so laid down in the delegating Act itself.[1]

II. Prior Consultation with Affected Interests

The technique of consultation is another means through which affected interest may participate in the rule-making process. In England, we have noted, the development of prior departmental consultations with affected interests rendered unnecessary the retention in the Statutory Instruments Act, 1946, of any general provision for antecedent publicity.[2] Indeed, the practice is so well established that "no Minister in his senses, with the fear of Parliament before his eyes would ever think of making Regulations without (where practicable) giving the persons who will be affected thereby or their representatives an opportunity of saying what they think about the proposal."[3] To facilitate consultation, the device of setting up advisory or consultative committees is frequently resorted to[4]. These committees enable the concerned Minister to come in touch with informed opinion before any decision is taken.

Apart from the departmental practice, provision for consultation is sometimes made in the enabling Act itself. Broadly speaking, the statutory requirement for consultation may be of four types:

> (a) An Act may require the publication of the proposals to make regulations if objections are made to the proposals, an enquiry is to be held or an opportunity of a personal hearing is to be given to the objectors.[5]

1. Dock Workers (Regulation of Employment) Act, 1948, S.4, applies the procedure of antecedent publicity for schemes framed under the Act; Employment of Children Act, 1938, S. 3-A requires a notice of 3 months to amend the Schedule to the Act.
2. "It is unthinkable that any important rules would be made about solicitors in England without consulting the Law Society or about doctors, without consulting the British Medical Association, or about local government without consulting the County Council Association and the Association of Municipal Corporation." Carr, *Concerning English Administrative Law*, p. 54.
3. Wade and Phillips, *Constitutional Law*, 6th Ed. (1960), p. 584.
4. Committee on Ministers' Powers (*Minutes of Evidence*) pp. 35-36.
5. See Griffith, *Delegated Legislation—Some Recent Developments*, 12 M.L.R. p. 297, 307-11.

(*b*) The minister may be required (and this is by far the most common practice) to consult certain specified bodies before he makes regulations. Normally they are either the statutory advisory bodies or the representatives of interests likely to be affected by proposed rule-making.[1]

(*c*) The power to draft regulations may be conferred directly upon the affected interests, and the minister acts only as a concurring or approving authority.[2]

(*d*) Under a few Acts draft regulations are required to be submitted to a stututory body by the minister, and the report of that body is required to be laid before Parliament.[3]

The last type referred to above is described as "an important development of the principle of prior consultation."[4] The National Insurance Act of 1946 for instance, provides for this type of consultation[5]. The Act sets up an advisory committee which consists of a chairman, and four to eight other persons of whom one represents the trade unions, one the employers and one, any friendly society. S. 77 of the Act prescribes that the draft regulations made under the Act must be submitted to the advisory committee. The committee issues notice to persons affected, hears objections, and submits its report on the draft to the minister. When the final regulations are laid before Parliament, the minister places the committee's report along with them and, if he has not given effect to any of the recommendations of the advisory committee, he has to submit a brief statement of his reasons therefor. It is believed that in fact many important changes in draft regulations had been secured by the said committee.[6]

Turning to America, we also find in vogue statutory prescription and administrative practice regarding consultation of interests.

Rule-making authorities in the United States have increasingly taken to the practice of receiving opinions and suggestions from groups that are likely to be affected by the proposed rules. As Fuchs observed: "Few administrative rule-making agencies whose work affects organised groups, especially economic groups, fail to maintain fairly regular contacts with

1· See, Factories' Act, 1937, S. 129, Schedule 2 (1 Edw. VIII and 1 Geo. VI, C. 67); Radio-active Substances Act, 1948, S. 9 (11 and 12 Geo VI C. 37).

2· E.g., Coal Industry Nationalisation Act, 1946, S. 14(2) (9 & 10 Geo. VI C. 59); Agricultural Development Act, 1939, S. 23 (2 and 3 Geo. VI, C. 48); London Passenger Transport Act, 1933, Ss. 57-66, Sch. 12 (23 & 24 Geo. V.C. 14).

3· Sea Fish Industry Act, 1938, S. 14 (1 & 2 Geo. VI C. 30); Agricultural Marketing Act, 1931, S. 10 (21 & 22 Geo. V. C. 42).

4· Fitzgerald, *Safeguards in Delegated Legislation*, 27 C.B.R. p. 550, 573.

5· The other examples are: Requisitioned Land and War Works Act, 1945 S. 8, and Control of Employment Act, 1939, S. 1, (2 & 3 Geo. VI C. 104).

6· Glanville Williams, *The Reform of the Law* (1951), p. 42

them."[1] Suggestions and comments from interested persons may be brought to bear on the rule-making process in any of the following ways :

(*a*) An agency submits draft regulations to a long list of interested individuals and groups for their views and thereafter discussion and correspondence often go forward at great length.

(*b*) In some cases advisory committees, set up either by the administration or by the enabling Act, are entitled to be consulted before the rules are finally adopted.

(*c*) Sometimes informal conferences of affected persons are held. Notice of meeting, accompanied by tentative drafts of regulations, is sent to interested persons and organisations. A record of the proceedings is made which is taken into consideration in finalising the proposed rules.

The Attorney-General's Committee on Administrative Procedure[2] pointed out that "The practice of holding conferences of interested persons in connection with rule-making introduces an element of give and take on the part of those present and affords an assurance to those in attendance that their evidence and points of view are known and will be considered."[3]

Another effective method of public participation in the rule-making process consists in holding public hearings on the proposed regulations. Such hearings are publicly announced in advance and any interested person is permitted to attend and testify. The hearings do not partake of the court proceedings. There are no specific issues, no rules of evidence, and no formalities, the reason being that the purpose is not to try a case but to enlighten the administrative agency and to protect private interests against uninformed or unwise action.[4] Hearings being open to all, any interested person who has not participated in the earlier processes of consultation and conference, may come forward with his suggestions and objections, if he has any.

Adversary hearings may be held either by virtue of legislative requirement or for reasons of administrative convenience. In adversary hearings, an administrative agency adopts trial methods in rule-making. Trial examiners sit as tribunals before whom witnesses for the affected interests are examined and cross-examined and, further, opportunity is given for full oral arguments. Formal records of all the evidence adduced at the hearing is maintained. A few recent statutes require findings of fact to support ad-

1. Fuchs, *Procedure in Administrative Rule Making*, 52 Harv. L. Rev. (1952) p. 259, 275.
2. *Final Report, Attorney-General's Committee on Administrative Procedure*, (1941). p. 101-111
3. *Ibid.*, 104.
4. *Ibid.*, 108.

ministrative regulations, and either stipulate that the findings shall be based exclusively on evidence available on the record of the hearing or empower the courts to set aside the regulations through statutory review proceedings on the ground that an essential finding lacks substantial evidence to support it.[1]

The peculiarity of carrying out an obvious legislative function through a quasi-judicial procedure may be explained by the fact that in some situations the rule-making process may virtually result in a verdict on contentious claims. Thus, where regulations propose to fix minimum wages or working conditions, the interests of the workers may be opposed to those of the employers, and they may often gain or lose depending upon the final shape that the regulations have taken. In these circumstances it may be desirable to let affected parties treat the rule-making proceedings as 'adversary'.[2] The Committee on Administrative Procedure, though not hostile to the use of adversary hearings in rule-making, doubted the wisdom of statutory provisions requiring the regulations to be supported by findings of fact based upon evidence on the record.[3]

In India, a number of statutes prescribe consultation. These provisions fall under the following heads:

(*i*) *Official Consultations*

In some cases, rule-making power is delegated subject to a stipulation that it is to be exercised in consultation with a named official authority or agency. Usually such a procedure is adopted for making rules concerning matters in which some independent authority, such as, for instance, a High Court or some other agency with a distinct status of its own, is also equally interested. Thus, the Central Government is required to make rules under S. 52 of the Banking Companies Act, 1949, after consulting the Reserve Bank of India; under S. 28 of the Representation of the People Act, 1950, after consulting the Election Commission; under S. 10 of the Merchant Seamen (Litigation) Act,

1. *Final Report, Attorney-General's Committee on Administrative Procedure*, p. 109.
2. *Ibid.*
3. Dr. Schwartz is equally critical of these procedures when he writes:
It is doubtful whether such 'adversary' procedure is well adapted to the formulation of administrative regulations. . .(The) procedure in practice has been cumbersome and expensive. Reading the lengthy records in these cases one cannot help but be struck, by the waste and delay caused by conformity to legalistic procedures appropriate to the court room. Schwartz, *An Introduction to American Administrative Law.* (1958), p. 68.

1946, after consulting the High Courts, and under S. 9 of the Agricultural Produce Cess Act, 1940, after consulting the Imperial Council of Agriculture. The object underlying this type of consultation is not so much to afford opportunity to affected interests to participate in rule-making, as to place an obligation on the government department to seek assistance from some other agency in the framing of rules.

(ii) Consultation with Statutory Boards.

Administration of control and assistance in relation to certain industries has been entrusted by central Acts to statutory boards. These boards are composed of nominated officials and representatives of affected interests and are normally associated with rule-making power in a consultative capacity.[1]

Therefore, the rule-making powers conferred on the Central Government under various Statutes are exercisable after consulting the concerned boards.[2] Taking into account the composition of these boards, the provision for consultation affords some opportunity to the afftected interests to canvass their views and suggestions before the government.

Two observations may be made regarding this type of consultation. First, there is no uniformity in the practice. The boards set up under S. 26 of the Khadi Village Industries Commission Act, 1956; S. 36 of the Faridabad Development Corporation Act; S. 26 of the Coir Industry Act; S. 13 of the Silk Board Act, 1948; S. 18 of the Indian Oil Seeds Committee Act, 1946; S. 17 of the Indian Coconut Committee Act, 1944, and S. 25 of the Rubber Act, 1947, though composed on principles similar to the boards mentioned above, are not required to be consulted by the Central Government in framing rules under these Acts. Secondly, the provision of consultation here is not primarily aimed at giving the interested persons an opportunity to take part in the rule-making process.

(iii) Consultation with Advisory Bodies

The practice of constituting advisory bodies to assist the Central Government or other subordinate authorities can be traced back to the year 1901,

1. Besides advising, these boards administer the subjects assigned to them. The requirement for consultation arises out of the necessity to know the views of the agency which is ultimately responsible for administering the proposed rules.

2. See the Coffee Market Expansion Act, 1942, S. 16; the Drugs Act, 1940, Ss. 6(2) and 12; the Indian Lac Cess Act. 1930, S. 8; Indian Soft Coke Cess Act, 1929, S. 7.

when provision was made in the Indian Mines Act[1] for the constitution of mining boards to advise the Central and State governments on framing of regulations and certain other matters. Following the precedent, several other Acts also provided for the setting up of advisory committee by the Central Government for the purposes specified therein.[2] The composition of advisory bodies is either laid down in the enabling Act itself or left to be regulated by the rules. But in either case they are to be composed mainly of persons representing affected interests. Confining ourselves to the part played by advisory bodies in the rule-making process,[3] the distinction between compulsory and optional consultations may be looked into. While in either case the advice is not binding upon the rule-making authority, the consequence of an omission to consult, as we shall see below, may not be the same in both the cases. One notable example of compulsory consultation is furnished by the Indian Mines Act[4] which makes provision for setting up of Mines Boards consisting of nominees of the mine owners, representatives of miners, an official chairman and the Chief Inspector of Mines. The Mines Board must be consulted before any rules are promulgated. The Industries (Development and Regulation) Act, 1951,[5] is another instance of compulsory consultation. The Act sets up a Central Advisory Council, consisting of representatives of the owners of industrial undertakings of the scheduled industries, labour, consumers and other interests including primary consumers, and stipulates that before making any rules under the Act, the Central Government must, save in certain cases, consult the council. Similarly, the Lighthouse Act, 1927,[6] requires the Central Government to appoint a Central Advisory Committee which must be consulted in regard to the making or altering, of any rules or rates under the Act. The Rubber (Production and Marketing) Act, 1947[7]

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1. Act 8 of 1901, Ss. 9 and 20.
2. See the Electricity Act, 1902, S. 35; the Indian Territorial Force Act, 1920; the Indian Lighthouse (Amendment) Act, 1959, S. 4; the Indian Merchant Shipping (Amendment) Act, 1928, S. 8.
3. The advisory bodies generally advise the government on several other matters as well. Only in two instances, the Electricity Act, 1903, S. 32, and the Merchant Shipping Act, 1923, the advisory bodies are constituted exclusively for the purpose of advising on the rule-making process.
4. Act 35 of 1952 as amended by Act 62 of 1959, Ss. 57, 58 and 59.
5. S. 5(4).
6. S. 4(*i*) (*e*), as amended by Act 16 of 1959.
7. S. 13.

is an example where the scope of consultation is limited only to the fixation of maximum and minimum prices of rubber. Compulsory consultation in the Minimum Wages Act, 1948,[1] is also limited to specified aspects. While fixing the minimum wages for certain scheduled employments, the Act empowers the Central Government to revise the rates subsequently, after consulting advisory committees composed of persons representing in equal numbers the employers and the employees of the scheduled employments and of independent members not exceeding one-third of the total number of members on a committee.

Consultation will be optional where the enabling Act leaves it to the discretion of the rule-making authority to refer to the advisory committee set up thereunder any matter arising out of the Act. In some instances the functions of the advisory committee have been defined in the Act or in the rules made thereunder. Generally, advising on rule-making is not expressly included in the Act or in the rules as one of the functions of an advisory committee. Still it is not unreasonable to expect and there is no legal bar to do so, that the competent authority may consult the advisory committee in matters relating to rule-making as well.

Where consultation is optional, it is not possible to estimate if and to what extent the advisory committees have been taken into confidence in the rule-making process. No reports of the work of the advisory committees are published.

(iv) Making of Draft Rules by Affected Interests

In a few instances power to draft rules is directly conferred on the affected interests. Ss. 3, 4 and 5 of the Industrial Employment (Standing Orders) Act, 1946, require the employer of an industrial establishment falling within the purview of the Act to submit to the certifying officer the draft of standing orders proposed by him for regulating the terms and conditions of employment in his establishment. The certifying officer has to notify the draft to the workmen and must receive their objections to the draft rules, if any. After giving the employer and the representatives of the workmen an opportunity of being heard, the officer certifies the draft with such modifications as he deems necessary. Similarly, S. 61 of the Indian Mines Act of 1952 requires the owner of a mine to frame and submit to the Inspector of Mines a draft of bye-laws for the prevention of acci-

1. Ss. 4-10.

dents and for the safety, convenience and discipline of those employed in the mine. The draft, after it has been approved by the inspector, is sent to the Central Government. If the Central Government approves the draft bye-laws, they must be published for information of persons affected and the copies of the draft bye-laws are made available to them. Written objections and suggestions are also invited and the government, after considering the comments received within the specified time, approves the bye-laws either in the form in which they were published or after making such amendments thereto as it thinks fit.[1]

So far we have described the practice of statutory consultation. As regards non-statutory consultation, there is no general departmental practice in India, as in England, of consulting affected interests before making rules. Of late, a number of consultative committees have been set up by informal administrative practice, most of them being drawn from trade and industry and have a general advisory function.[2] Though consideration of draft rules is not one of the functions expressly assigned to them, the association of these committees with policy matters may, to some extent, influence the substance of subordinate legislation.

(*v*) *Suggestions for Improvement*

It would appear from the above that in India due importance is not given to the participation of affected interests in the rule-making process. There is no general departmental practice of prior consultation with outside interests, and though provision has been made in some Acts for non-official advisory committees, it is only exceptional that consultation with them in rule-making has been made compulsory. In other cases, such consultation, though not barred, has not been specifically mentioned as one of the functions of advisory committees. There is no practice of setting up

1. In a like manner, S. 8 of the Securities Contracts (Regulation) Act., 1956, empowers the Central Government, by order in writing to direct recognised stock exchanges or any recognised stock exchange in particular, as the case may be, to make any rules or to amend any rules already made in respect of all or any of the matters specified in sub-sec. (2) of S. 3 within a period of six months from the date of the order.

2. Iron & Steel Advisory Committee; Jute Export Advisory Committee; Central Arecanut Committee; Central Tobacco Committee; Central Jute Committee; Central Employment Advisory Committee; All India Cattle Show Committee; Textile Advisory Committee; Non-statutory consultation by the President in regard to the amending of the Civil Service (Classification, Control and Appeal) Rules, S.R.O. 1379—Power of amendment in Civil Service Regulations after consulting Comptroller and Auditor-General.

of advisory committees by administrative action for the consideration of draft rules.

The procedure of antecedent publicity, though in vogue for over seventy years, has never been made a general requirement for all subordinate rule-making. The result has been that its use has been somewhat capricious. While statutory rules and notifications vitally affecting private rights have been made without previous publicity, instances may be cited where the procedure has been used for matters of least importance. Moreover, as has been noted earlier, the procedure of antecedent publicity outlined in S. 23 of the General Clauses Act, 1897, is applicable to "rules" and "bye-laws" only; it has no application to delegated legislation which goes by other names, such as "orders", "notifications" or "schemes."

The importance of participation by affected interests in the rule-making process is self-evident. Apart from other considerations, the administrative machinery moves smoothly if such interests are consulted. The Planning Commission of India eloquently expressed the same sentiments in the following words:

> Under democratic conditions, the response which an administration makes to the needs and views of the public is of the greatest significance for two reasons. In first place, there is no surer test of the success of a policy than that it should be in tune with the genuine needs of the people and should receive their sympathy and good-will. In the second place, it suggests the need in all spheres which affect the public, of taking its best elements into confidence, seeking their advice and formulating policies so that they should afford the maximum public satisfaction. This part of the activity of the Government is at present poorly organised, and there is little doubt that some of the dissatisfaction arising from economic conditions which has grown up during the past two or three years is due to the hiatus which exists between Government's policies and the general lack of knowledge of the essential facts and considerations on which they are based.[1]

At this point it may be asked whether it would not be desirable to lay down certain statutory procedural requirements for rule-making. An objection to any such proposal may be that this formula would bring in rigidity in the rule-making process and deprive it of its quality of flexibility. It may be argued, first, that the same procedure may not be suitable for all the varied circumstances which may call for the exercise of rule-making power and, second, it may not be possible or practicable to follow the

1. Government of India Planning Commission, *The First Five Year Plan—A Draft Outline* (1951), pp.247-48.

prescribed procedure in circumstances where disclosure of draft regulations may be prejudicial to the public interest or in situations of emergency. The objections, though valid, are not insurmountable. It is possible to provide minimum procedural requirements with a proviso accommodating extraordinary circumstances and exempting emergency situations. But then what should be the minimum procedural requirements which may be made applicable generally to all rule-making? Taking into account the fact that the Indian Parliament has to legislate for vast territory, and the fact that there exist no well-organised associations for economic interests, the simplest and the most administratively feasible procedure would be to make antecedent publicity of delegated legislation, with an opportunity being given to interested persons to represent, a general minimum requirement. The legislative practice in India has fairly got used to the procedure of antecedent publicity. But this must be made a general requirement instead of an ad hoc Act-to-Act affair.

Besides making antecedent publicity a condition for all rule-making, the existing procedure outlined in the General Clauses Act, which we have described above, may further be modified on the following lines:

1. Provision may be made for the publication of the proposed rules in the regional languages and where such a course is not convenient and practicable the summary of the proposed rules may be published in such regional languages; hitherto they are published only in the English language.

2. The procedure in the General Clauses Act must be extended to cover all kinds of delegated legislation irrespective of the names in which they are styled. It will also be necessary to adopt and define some generic term, like "statutory instrument" which is used in the English Act of 1946, to cover delegated legislation appearing under different names.

3. The rule-making authority may be permitted to dispense with the giving of notice in emergency situations or in circumstance where the disclosure of proposed legislation would be against public interest or where the rule-making concerns minor or merely technical amendments. To avoid the dispensing provision being treated as an "escape" clause, the rule-making authority should be required to state the reason for dispensing with antecedent publicity. The Lok Sabha Committee on Subordinate Legislation may be empowered to draw the attention of Parliament particularly to situations where it finds that the reasons for not following the procedure are unsatsfactory.

Besides the above safeguards, consultations with statutory advisory committees, wherever they exist should, as a rule, be adhered to for the purpose of rule-making. In social and economic legislation affecting large sections of the population the precedent set up by the advisory committee under the English National Insurance Act, 1946, may usefully be followed. While it will not be safe to import the Ameri-

can procedure of "adversary hearings", the other type of "hearings" can usefully be tried in certain situations, for example, in the fixation of wages under the Minimum Wages Act, 1948.

III. Post-natal Publicity of Delegated Legislation

Techniques of consultations, or of antecedent publicity of proposed rule-making, aim at the democratisation of the law-making process at levels other than those of representative legislatures. Equally important, though for different reasons, is the need for post-natal publicity of delegated legislation.[1]

The maxim, "ignorance of the law is no excuse", applies with equal force to rules and it is as much a part of the law of India as of England.[2] This maxim, in the words of Scott L. J., "represents the working hypothesis on which the rule of law rests in British democracy....but the very justification for that basic maxim is that the whole of our law, written or unwritten, is accessible to the public— in the sense, of course, that, at any rate, its legal advisers have access to it at any moment as of right."[3]

In England, until 1890, "Delegated Legislation was almost undiscoverable".[4] Partly it was buried in the London Gazette and the rest being scattered over Parliamentary Papers and other departmental documents and files without any system whatsoever.[5] Pursuant to a direction of the Lord Chancellor, statutory rules and orders of public and general nature were collected and published in 1820. Subsequently, the Rules Publication Act, 1893,[6] was passed which established a system of registration and publication of statutory rules and orders. Every rule which was of a legislative, and not of an executive character, and which was

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1. Carr emphasises this aspect when he observes that "As soon as rules have been finally made, they should have as great post-natal publicity as statutes, for they are just as much part of the law which the King's subjects are taken to know." Carr, *Delegated Legislation*, p.36.
2. *Debi Prasad* v. *Emperor*, I.L.R. (1947) All. 205; A.I.R. 1947 All. 191; *Mahadeo Prosad* v. *Emperor*, I.L.R. (1945) Pat. 781; A.I.R. 1946 Pat.1
3. *Blackpool Corporation* v. *Locker*, (1948) 1All. E.R. 85, 87.
4. Carr, *Delegated Legislation*, p.44.
5. Ibid.
6. 56 & 57 Vict. C. 66.

direct and immediate and not merely confirmatory, was brought within the definition of "statutory rules and orders." The new label includes the exercise of a power not only to make, but also to confirm or approve, orders, rules, regulations or other subordinate legislation.

S. 2 of the Statutory Instruments Act, 1946, retaining S. 3 of the Rules Publication Act, 1893, provides that immediately after a statutory rule has been made it shall be sent to the Queen's Printer to be numbered in accordance with the regulations made under the Act and, except for the causes provided in the regulation,[1] copies of it are to be printed and sold by the Queen's Printer. The regulations require the government departments sending a statutory instrument to the Queen's Printer to certify it as "general" or "local", according to its subject-matter.[2] The stationery office is also required to publish from time to time "Statutory Instruments Issue Lists" showing the serial number and short title of each statutory instrument and the date of the first issue by that office. At the end of each calendar year the stationery office publishes an annual volume containing the text of general regulations. The contents of the annual volume are arranged subjectwise in alphabetical sequence, with an index and a classified list of local instruments. An index, now called "Guide to Government Orders", to statutory instruments is published at the end of every third year. This consists of statements of the individual powers, classified under subject heading with particulars of the principal enactments by which it was conferred, and of every subsequent enactment which has amplified or modified it. Immediately following each power is a list containing the short titles, and volume and page references, of all instruments made in exercise of the power that were in operation at the stated date, where appropriate, or a statement that the power had not then been exercised.

There is no general statute regulating the publication of delegated legislation in India. A delegating Act may, and usually does, lay down the condition of publication of subordinate legislation made thereunder.

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1. Under the regulations the following are not printed :
   (a) if certified by the responsible authority as otherwise regularly publicised;
   (b) if certified by the responsible authority as shortlived and publicised elsewhere;
   (c) if certified by the responsible authority that the schedules are to be bulky and publicised elsewhere;
   (d) if certfied by the responsible authority that printing is contrary to public interest.
2. "general", when the regulations are in the nature of public and general Act, and "local", when they are in the nature of local or personal or private Acts.

Normally, the enabling Acts require the publication of the rules made thereunder in the Gazette of India. Sometimes, however, they are silent on the manner of publication.

The general practice in the matter of publication of rules is that:

(a) rules shall be published in the Official Gazette and shall come into force on such publication[1]; or

(b) rules shall be published in the Official Gazette and shall thereupon have the force of law[2]; or

(c) rules shall be published in the Official Gazette and thereupon have effect as if enacted in the Act[3]; or

(d) the Central Government may, by notification in the Official Gazette, make rules[4]; or

(e) rules shall be published in the Official Gezette.[5]

If the expression used is one of the types referred to in (*a*) to (*d*), the rules will not come into operation unless gazetted. But the legal position in the case of 'e' type expression is not that clear.

The Gazette of India, which was brought into being by Act XXXI of 1863, has been the "Official Gazette" of the Government of India since 1863. The Central Government usually publishes its statutory rules and orders, Acts, resolutions, public notices, advertisements and such other matters as it may desire to notify to the public, in the "Gazette of India".

The "Gazette of India" is divided into four parts, the parts being further sub-divided into sections. Section 3 of Part II is devoted to statutory rules and orders notified by the Ministries of the Government of India, other than the Ministry of Defence, and central authorities, other than the Chief Commissioners. Statutory rules and orders notified by the Ministry of Defence are published in Section 4 of Part II. Sections 1 and 2 of the same part notify Acts and Bills, and Reports of Select Committees, respectively. Prior to January 1950, there was no separate section for statutory rules and orders; they were published in Section 1 of Part I along with other non-statutory notifications of the Government of India. Since 1958, however, statutory

1. See, Petroleum Act, 1934, S. 29.
2. Pension Act, 1871, S. 14.
3. See, Indian Securities Act, 1920, S. 24.
4. See, Reciprocity Act, 1943, S. 6(1).
5. See, Tea Cess Act, 1903, S. 7.

rules of general effect (S.R.Os.) and statutory orders and notifications (S.Os.) which are not of general application have been separately published in the gazette. But this distinction is not maintained in the case of instruments issued by the Defence Ministry.

Section 3 of Part II, however, does not exclusively contain rules of legislative character. Since there is no legislative definition restricting the expression, "statutory rules and orders", to subordinate law, it is left to the concerned ministry or the department to decide, before sending the material for publication in the official gazette, what orders shall be classified as "statutory rules and orders". The result is that non-legislative statutory orders are also included in Section 3. For example, orders making statutory appointments[1] or nominations,[2] orders referring disputes for adjudication under the Industrial Disputes Act, 1947,[3] awards made by the Industrial Tribunals,[4] notifications of change of headquarters of government offices,[5] and reports of statutory boards,[6] public notices[7], orders giving recognition by the President to any Ruler of a State,[8] notifications regarding elections,[9] notifications publishing the judgment of a High Court on appeal from election tribunal,[10] opinion of Election Commissioner on reference petition made to President,[11] and various other kinds of orders,[12] appeared in this section. Conversely, some of the

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1· E. g. Appointment of Mines Inspector under the Mines Act, *Gazette of India*, Pt. II, Section 3, 13th Dec., 1952, p.1790.

2· E. g. Nomination to a statutory Board-S.R.O. 1018, *Gazette of India*, Pt. II, Section 3 7th July, 1951; S.R.O. 181, *Gazette of India*, Pt. II, Section 3, 11th Jan., 1957, p. 90.

3· S.R.O. 204 (49), *Gazette of India*, Pt. II, Section 3, 17th Feb., 1951; S.O. 1313, *Gazette of India*, Pt. II, Section 3, sub-section (II), p. 1155.

4· S.R.O. 2390, *Gazette of India*, Pt. II, Section 3, sub-section (II), 1958, p. 1144; S.O. 2284, *Gazette of India*, Pt. II, Section 3, sub-section (II), 1959, p. 2935.

5· *Gazette of India*, Pt. II, Section 3, 4th Aug., 1951, p. 1129.

6· S.O. 2218, *Gazette of India*, Pt. II, Section 3, 13th Sept., 1952, p. 1400.

7· S. O. 2191, *Gazette of India*, Pt. II, Section 3, sub-section (II), 1959, p. 2691; S.O. 2373, *Gazette of India*, Pt. II, section 3, sub-section (II), 1959, p. 3002.

8· S. O. 2238, *Gazette of India*, Pt. II, Section 3, sub-section (II), 1959, p. 2904.

9· S. O. 1638, *Gazette of India (Ext.)*, Pt. II, Section 3, sub-section (II), 1958, p.893.

10· S. O. 1679, *Gazette of India (Ext.)*, Pt. II, Section 3, sub-section (II), 1958, p. 903.

11· S. O. 1740, *Gazette of India*, Pt. II Section 3, sub-section (II), 1958, p. 1510.

12· E. g. order concering remittance of stamp duty-S.R.O. 103, *Gazette of India*, Pt. II, section 3, 1957. p. 53; order referring to the certification of the film version in other languages-S.R.O. 324, *Gazette of India*, Pt. II, Section 3, 1957, p. 210; order containing direction or notification for general information-S.R.O. 1318, *Gazette of India*, Pt. II, Section 3, sub-section (II), 1958 p.1156.

statutory rules and orders of legislative character do not appear in Section 2 of Part II. A good number of them is notified through extraordinary gazettes which are published on all days of the week. Looking at the nature of statutory rules and orders published in the ordinary and extra-ordinary gazettes, it will be difficult to decide why some rules are published in the ordinary gazette and some others in extraordinary gazette. Perhaps, the urgency of a subject-matter under regulation may explain it to some extent, but there are a large number of instances to suggest that this is not the satisfactory explanation.[1] This is not all. It is not uncommon to find orders of a legislative character scattered in two other sections of the gazette, namely, Section 1 of Part I and Section 1 of Part III. The former is headed as one relating to non-statutory rules and notifications of the Government of India, and the latter as "notifications issued by the Auditor-General, Union Public Service Commission, Railway Administration, High Courts, and the attached and subordinate offices of the Government of India." There is no fixed practice as to the nature of subordinate laws which may appear in these two sections.

The mode of citing statutory rules makes the confusion worse confounded. The practice is to refer to a rule by the date on which it was made and not the date, section or type of the gazette in which the rule was published. The two dates, that is, the date of making and the date of gazetting, may not necessarily be the same. The result is that even if you know the date of a rule you may not readily find it. The number given to a S.R.O. is of no great help either, because the S.R.O's are not published serially.

Finally, it may be noted that there is no system in India of bringing out annual compilations of general rules and orders. Until 1907, no consolidated compilations of statutory rules and orders were published except that the lists of such rules and orders were periodically issued by the legislative department of the Government of India. The first compilation of the rules, orders and notifications issued under the atuhority of the Governor-General-in-Council, under Statutes of Parliament and General Acts of the Governor-General-in-Council applying to British India, was published in four volumes in 1907, the second, in 1915 and the third in 1926-28. No

1. Draft amendments were published in Gazette of India (Ext.) 20th Sept., 1951 which were taken up for consideration on 3rd Oct. 1951, though an ordinary gazette was due on 22 nd Sept., 1951.

revised edition was issued thereafter, but through supplements[1] the last edition was kept up-to-date until 1946. No supplements appear to have been issued thereafter except a "Manual of Control Orders" issued in 1949, containing the central control orders that were in force on March 1, 1949. It was only recently that an earnest attempt was made in this direction when the Ministry of Law brought out the first volume of General Statutory Rules and Orders in 1960[2] and the second, in 1961.[3] However, these constitute a small portion of the total volume of the statutory rules and orders. Further, the public has no easy means of knowing whether a statutory power of making rules and orders under a particular Act has been exercised, and if so, when they are made and where they can be found. Absence of proper index or guide adds to the existing difficulties.

Suggestions

It is, therefore, suggested that there should be a separate publication for statutory instruments of a legislative character instead of their being published in a heterogeneous publication like the "Gazette of India."[4]

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1. (i) Supplement 1926-30, notifications, etc., under Acts 1865 to 1908 (1932).
   (ii) Supplement 1926-30, Vol. 2, statutory rules, etc., under Act, 1910-30 (1932).
   (iii) Supplement 1931-35, Vol. 3, statutory rules, etc., up to Act XVIV of 1923(1937)
   (iv) Supplement 1931-35, Vol. 4, statutory rules, etc., from Act 1 of 1923 to Act XIV of 1935 (1937).
   (v) Supplement 1943, Vol.5, Orders in Council, etc., made under statutes relating to India (1943).
   (vi) Supplement 1936-42, Vol.6, statutory rules, etc., from Act VII of 1870 to Act VIII of 1923 (1945).
   (vii) Supplement 1936-42, Vol. 7, statutory rules, etc., from Act XIV to Act 4 of 1936 (1944).
   (viii) Supplement 1936-42, Vol.8, statutory rules, etc., from Act 1 of 1937 to Act 1 of 1944 (1944).
   (ix) Supplement 1943-45 (1948).
   (x) Parts I and II comprising substantive extent notifications and orders etc., issued during 1946 (1949).
2. (As modified up to the 1st March, 1960 covering the subject headings "Accounts', "Acquisition and Requisitioning" and "Agriculture".).
3. Modified upto the 1st November, 1961 covering the subject headings "Air Navigation", "Aliens", "Animals and Birds", "Arbitration" and "Armed Forces". The Ministry of Law has also brought out a compilation volume of "Rules and Orders under the Constitution", as modified upto 1st December, 1959.
4. As Sir Cecil Carr has said "The delegated legislation of a country deserves the dignity of publication in an official series of its own, not encumbered (like the London Gazette) with masses of non-legislative material" Carr, *Concerning English Administrative Law*, p.57.

Subject to specified exceptions, copies of all statutory instruments should be printed and sold immediately after they have been made. Secondly, at the end of each calendar year all statutory instruments so published and still in force should be collected together in a bound volume or volumes arranged systematically with an index. Thirdly, for every three months there should be issued a List of Statutory Instruments to show what instruments have been issued during the period to which the list relate and the place where they can be found. Fourthly, a general and detailed index to existing statutory instruments should be brought out periodically.

If a separate publication for the subordinate legislation is not immediately feasible, an alternative may be that the orders of legislative character, instead of being published, as at present, in different sections of issues—ordinary and extraordinary— of the "Gazette of India", should be published in a new part of the gazette which is to be kept exclusively for such orders and the new part of the gazette should be published on all days of the week.

It is not clear if a mandatory condition of gazette publication laid down in the enabling Act would also apply to the sub-delegated legislation, if any, made thereunder. In England it had been held that the provision relating to the publication of statutory instruments in the Statutory Instruments Act, 1946, would be applicable only to primary delegated legislation.[1]

The above discussion has some relevancy to the question as to the date on which any given rules come into operation. With regard to statutes, the position in the English common law is that an Act of Parliament becomes law from the earliest moment of the day on which it receives the royal assent. In India also the General Clauses Act, 1897 provides that "where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent.....of the President. . . Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."[2] But there is no provision even in the Act as to the effective date of statutory rules and orders.

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1. *Blackpool Corporation* v. *Locker*, (1948) 1 All. E.R. 85, 92.
2. General Clauses Act, 1897, S. 5.

Though provided specifically, the common law rule on this point is not very certain. In *Johnson* v. *Sargant*,[1] an order was made under the Defence of the Realm Regulations by the Food Controller on May 16th. The effect of the order was published in the newspapers on the morning of May 17. Invoking the analogy of Acts of Parliament, it was argued that the order took effect from the earliest moment of the day it was passed (i.e. May 16). The court, however, held that the order came into operation only when it "became known" on the 17th May. The rule applicable to statutes could not apply to rules because there is about statutes a publicity even before they come into operation which is absent in the case of rules.

This decision has not been followed in any other case and it has been doubted if it would be upheld by a superior court.[2] In *Brightman and Co.* v. *Tate*, McCardie J.,[3] referring to *Johnson's* case queried:

> To whom is the order to be known ere it be binding? Is it the public, or the members generally of the trade affected, or the parties before the Court? On whom, moreover, is the onus of proving or disapproving a knowledge of the Order?

Then it would appear that the decision in *Johnson's* case does not quite stand where it did[4] after the enactment of S. 3(2) of the Statutory Instrument Act, 1946, which provides:

> In any proceedings against any person for an offence consisting of a contravention of any such statutory instrument, it shall be a defence to prove that the instrument had not been issued by His Majesty's Stationary Office at the date of the alleged contravention unless it is proved that at that date reasonable steps had been taken for the purpose of bringing the purport of the instrument to the notice of the public, or of persons likely to be affected by it, or of the persons charged.

The inference to be drawn from the provision set out above seems to be that subordinate legislation may not take effect unless published and not until it "becomes known."[5] S. 3(2) of the Statutory Instrument Act, it must be noted, does not apply to the instruments the breach of which does not constitute a criminal offence, nor does it cover those subordinate laws

1· (1918) 1 K.B. 101, 103.

2· Allen, *Law and Orders* (1947), p. 60.

3· 35 T.L.R. (1917-18) 209, 212.

4· See Carr, *Review of Legislation, United Kingdom, Journal of Comparative Legislation*, Vol. 30, p. 15.

5· In *Jones* v. *Robson* (1901) 1 K.B. 673, 680 it was held that an order came into effect when it was made.

which are not statutory instruments. They are not affected for it is declared in the same section: "Save as therein expressly provided, nothing in this section shall affect any enactment or rule of law relating to the time at which any statutory instrument comes into operation."[1]

IV. Intelligibility of Statutory Instruments

Intelligibility of statutory rules is closely associated with, though not constitutive of, safeguards against rule-making powers. As we said earlier, delegated legislation very often has more direct impact upon the life of the ordinary citizen than Acts of Legislatures. There is, therefore, need to make statutory rules and orders simple and easily understandable by the general public. No doubt the subjects dealt with are in many cases, of an exceedingly complex nature, but that should make clarity all the more desirable.[2] As Sir Cecil Carr has said:

> The statute has to be drafted in a compressed and technical form so as to be as far as possible Parliament-proof. The delegated legislation is under no such necessity. It is not going to be wrangled over word by word and line by line and clause by clause. It can be framed with full regard for the people who have to obey it, the wavaring men who may err therein.[3]

It is not proposed to dilate here on ideal drafting, but the point is that many of the statutory rules and orders are framed in such involved language that they are beyond comprehension of an ordinary person. In an appeal from Bombay the Supreme Court of India, referring to certain notifications, observed[4] in exasperation:

> An ordinary citizen may find it a perplexing task to attempt to extract information out of the long series of complicated regulations, as to the true nature and extent of the right which the law confers upon him.

This is equally true about the rules. The following extracts will prove it.

> In exercise of the powers conferred by sub-rule (1) read with sub-rule (3-A), of rule 114 of the Defence of India Rules, as continued in force by the Essential Provisions (Continuance) Ordinance, 1946.....the Central Government is pleased to direct that the provision of the notification of the Government of India in the Department of Commerce, No. 72 (1)-TR (W)/39, dated the 2nd November, 1939, No. 23-Tr. (W)/40, dated the 5th June, 1940, No. 120 (2)-F.T. (A)/41, dated the 8th December 1941 and sub-para (1) of para (3) of the Enemy Property (Custody and Regulation) Order, 1938, shall not in respect of any transaction entered into on or after the 12th October 1946 under an authority given generally or specially by the Central Government apply to :

1. See S. 3(3).
2. *Special Report of Select Committee on Statutory Instruments*, 125 H.C. of 1950, p. 116.
3. Cecil Carr, *Concerning English Administrative Law*, p. 141.
4. *State of Bombay* v. *F. N. Balsara*, A.I.R. 1951. S.C. 318, 329.

(a) any money which would but for the existence of a state of war become payable on or after the 12th October 1946, to, or for the benefit of, any person resident in, or of any body of persons constituted or incorporated in Hungary. . . .[1]

Prof. Keeton, after quoting similar instances of complicated legislation emanating from a department of the Central Government in England, observes:[2]

> It is almost unbelievable that large sums of moneys are being paid in salaries to allow Departments to issue rubbish of this kind. Unfortunately, the tortured and incoherent language of these and other documents is indicative of the manner in which the departments are today transacting the nation's business.

Yet the evils of the "tortured and incoherent" language of regulations in England have been to some extent mitigated by the practice of adding explanatory notes to subordinate legislation. In India the public has to suffer the consequences of such regulations without even the aid of explanatory notes.

The practice of appending explanatory notes to statutory instruments in England was first adopted in relation to Defence Regulations and instruments made under them,[3] but later it was extended to subordinate legislation generally. The purpose of explanatory notes is to summarise the complicated and voluminous provisions of subordinate legislation so that the reader may appreciate the aim of new legislation, without unnecessary difficulty or research. They do not purport to construe the law.[4] Explanatory notes are, of course, no part of the law: this is made clear by prefacing to every such note a statement that the note is not a part of the order, but is indicative of its general purport.[5] Adoption of a similar practice, of adding explanatory notes to subordinate legislation, in India will no doubt be a great help in understanding the purport of subordinate legislation.

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1. See Reg. No. 102(34) F.T.(A)/46, *Gazette of India*, Pt. I, 2nd Nov, 1951 p. 1560.
   Another example:
   In pursuance of the provision of sub-clause (3) of clause 1 of the Food Grains (Licensing and Procurement) Order, 1952 and in partial modification of the notification of the Government of India in the Ministry of Food and Agriculture (Food) No. S.R.O. 1183, dated the 8th July, 1952, the Central Government hereby directs that the said order shall come into force in the State of Madras on the 31st Oct., 1952.
   See Reg. No. 151, *Gazette of India*, (Ext) 31 Oct., 1952.
2. G. W. Keeton, *The Passing of Parliament* (1952) p.71.
3. H. C. Debates, Vol. 389, p. 1663.
4. *Report of Select Committee on Statutory Instruments*, 239 H.C. of 1951, p.4.
5. "Subordinate Legislation", *Journal of Public Administration*, Vol. 30 p. 227, 245.