

COMMITTEE ON SUBORDINATE LEGISLATION

The most effective control that Lok Sabha exercises over subordinate legislation is through its scrutiny Committee the "Committee on Subordinate Legislation". For the first time the Committee was constituted in December, 1953 and has been constituted since then from year to year.

The functioning of the Committee on Subordinate Legislation, Lok Sabha is largely governed by the Rules 317 - 322 of Rules of Procedure and Conduct of Business in Lok Sabha* and Directions 103 – 108 of Directions by the Speaker, Lok Sabha. *

Functions.

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

[Rule 317]

Examination of Orders

The Committee on Subordinate Legislation examine all Regulations, Rules, Sub-rules, Bye-laws, etc. commonly known as 'Orders', whether laid on the Table of the House or not, framed in pursuance of the provisions of the Constitution or a statute delegating power to a subordinate authority, to make such Orders.

[Dir. 103(1)]

After an 'Order' is published in the Gazette, it is examined by the Lok Sabha Secretariat to determine whether it is required to be brought to the notice of the Committee on any of the grounds laid down in rule 320 of the Rules and Procedures and Conduct of Business in Lok Sabha or in accordance with any practice or direction of the Committee. In other words Rule 320 *ibid* primarily prescribe the scope of examination of the statutory orders which reads as under:-

"320. After each such Order referred to in rule 319 is laid before the House, the Committee shall, in particular, consider—

(i) whether it is in accord with the general objects of the Constitution or the Act pursuant to

which it is made;

(ii) whether it contains matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament.

- (iii) whether it contains imposition of any tax;
- (iv) whether it directly or indirectly bars the jurisdiction of the courts
- (v) whether it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- (vi) whether it involves expenditure from the Consolidated Fund of India or the public revenues;
- (vii) whether it appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
- (viii) whether there appears to have been unjustifiable delay in its publication or in laying it before Parliament; and
- (ix) whether for any reason its form or purport calls for any elucidation.”

Examination of Bills

The Committee also 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’ on the Table of the House have been made therein.

The procedure for examination of the Bills is the same as in case of ‘Orders’.

[Dir. 103(2) & (3)]

Examination of Bills Referred to Committee by Speaker

The Speaker may also refer Bills containing provisions for delegation of legislative powers to the Committee and where a Bill is so referred, the Committee shall examine —

- (i) the extent of such powers sought to be delegated; and
- (ii) where powers are sought to be delegated to State Governments or other authorities for bringing into operation any subsidiary provisions or to make any further rules or regulations, the necessity for such delegation as well as the extent and manner in which such powers shall be exercised by the subordinate authorities concerned.

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

[Dir. 103A]

Composition and Term

The Committee shall consist of not more than fifteen members who shall be nominated by the Speaker: Provided that a Minister shall not be nominated a member of the Committee, and if a member, after nomination to the Committee is appointed a Minister, such member shall cease to be a member of the Committee from the date of such appointment. The term of office of members of the Committee shall not exceed one year.

[Rule 318(1) & (2)]

Study Tours

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

Reports

The Committee presents its Reports to the House from time to time. If the Committee is of opinion that any Order should be annulled wholly or in part, or should be amended in any respect, it shall report that opinion and the grounds thereof to the House. Further, if the Committee is of opinion that any other matter relating to any Orders should be brought to the notice of the House, it may report that opinion and matter to the House.

[Rule 321 (1) & (2)]

The Speaker may issue such directions as may be considered necessary for regulating the procedure in connection with all matters connected with the consideration of any question of Subordinate Legislation either in the Committee or in the House.

[Rule 322]

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

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

Important recommendations/observations made by the Committee

(i) Provision of Rule 70 of the Rules of Procedure and Conduct of Business in Lok Sabha are mandatory and therefore compliance therewith should invariably be made in case of every Bill which involves delegation of legislative power to the Central Government or to any other authority.

(ii) Ordinarily, rules should be framed under an Act as soon as possible after its coming into force and in no case this period should exceed six months.

(iii) As far as possible, the use of complicated language in the rules should be avoided. Rules should be specific and definite. The use of vague expressions (like 'unreasonable large quantity'), which may be interpreted differently by different persons, is to be avoided.

(iv) In cases where the rules are required to be published in the draft form, a period of not less than 30 clear days should invariably be given to the public to send their comments/suggestions on the draft rules.

(v) 'Orders', required to be laid before the House, should be laid within a period of 15 days after their publication in the Gazette, if the House is in session. And if the House is not then in session, the 'Orders' should be laid on the Table as soon as possible (but within 15 days) after the commencement of the following session, whenever, 'Orders' are laid after an inordinate delay, an explanatory note giving the reasons for such delay should be appended thereto.

(vi) All rules framed by Government, pursuant to Constitutional or statutory provisions, should invariably be published in the Gazette for public information.

(vii) Like rules, regulations should also be, laid before Parliament and there should be a provision to this effect in the relevant statutes.

(viii) When the principal rules are required to be laid before Parliament, all statutory orders made under the rules should also be laid on the Table.

(ix) Whenever rules are laid on the Table of the House, a Statement of Objects and Reasons and also explanatory notes on the rules should also be appended thereto. When new rules

amending the original rules are laid on the Table the relevant extracts of the original rules sought to be amended should also be attached to amending rules.

(x) Only matters of procedure and details should be spelt out through Subordinate Legislation. Substantial matters should, more appropriately, be dealt within the Act itself.

(xi) No charges should be levied unless there is an express authorisation therefor in the parent law.

(xii) The power to impose fees by rules or bye-laws should expressly be given in the parent Act.

(xiii) The provision to recover dues of excise duty as arrears of land revenue, being in the nature of an extreme remedy, is a substantive provision for which a specific authorisation must be made in the Act itself rather than in the rules framed thereunder.

(xiv) Retrospective effect to Subordinate legislation cannot be given without an express authorisation therefor in the parent Act. Even the cases where the Government has the power to give effect to Subordinate Legislation such powers should be exercised only in unavoidable circumstances, and the Rules/Regulations framed thereunder should in each case be accompanied by an explanatory note or memorandum affirming that no one was likely to be adversely affected as a result of retrospective effect given thereto.

(xv) Rules should not be so framed as to cause an injustice.

(xvi) Rules should conform to the principles of natural justice. Conferring the right of being heard to the party adversely affected by a decision of the Executive, recording in writing the reasons for such decision, and communicating the same to the party concerned are the basic requirements of natural justice.

(xvii) When a right of appeal has been given to an aggrieved person, the right should not be just illusory. Some reasonable time limit for filing an appeal should be provided.

(xviii) Some safeguard should be imposed before delegate is given wide powers to sub-delegate the authority to another functionary.

(xix) Having regard to the fact that the manner of filling vacancies and principles of determining seniority are basic ingredients of any service rules, these should be incorporated in the rules and not left to be determined through executive instructions.

(xx) Relaxation of rules should be with respect to a class or category of persons and not to an individual, so as to obviate the possibility of discrimination among persons similarly placed.

Further, in case an exemption provision is incorporated in rules, it should be provide, 'for reasons to be recorded in writing' before grant of an exemption.

(xxi) In cases where power to conduct searches/seizures is vested in officers, the minimum rank of the officers empowered to exercise such a power should be specified in the rules. Further, safeguards like presence of witnesses, preparation of inventories and giving copies thereof to the persons concerned should be provided.

(xxii) In cases of recruitment of Group 'A' and Group 'B' posts, the relevant recruitment Rules should contain provision regarding consultation with the Union Pubic Service Commission.

(xxiii) The provisions of extreme nature such as service of order, summons or notices etc. should not form part of the rules. If absolutely necessary, these should be provided for in the parent Act.

(xxiv) The Communications addressed by the Committee should be dealt with the concerned Ministry/Department at a sufficiently high level and replies thereto should be signed by senior officers not below the rank of Deputy Secretary.

(xxv) In cases where the rules/regulations/bye-laws are published in draft form for inviting comments/suggestions from the public, those should be finalised and notified in final form within a period of 3 months after the receipt of comments/suggestion.

Flow Chart showing the procedure to be followed by Committee on Subordinate Legislation

Publishing of Regulations, Rules, Sub-rules, bye-laws etc., in the Gazette of India or laid on the Table of the Lok Sabha.

Study of Part II, Sections 3(i) & (ii) and 4 of the Gazette and the list of Orders laid in the Table of the House.

Scrutiny of Orders to see –

- Whether it is in accord with the general objects of the Constitution or the Act.
- Whether it contains matters which should be more properly be dealt with in an Act of Parliament.
- Whether it contains imposition of any tax.
- Whether it directly or indirectly bars the jurisdiction of the courts.
- Whether it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such powers.
- Whether it involves expenditure from the Consolidated Fund of India or the Public Revenues.
- Whether there appears to have been unjustifiable delay in its publication or laying it before Parliament.

'Orders' which are laid on the Table will be entered in a register. Twenty copies each of all such orders will be supplied to the Branch by Table Office immediately after these have been laid on the Table. Sets of these 'Orders' will be circulated to the Members of the Committee on Subordinate Legislation at convenient intervals to enable them to bring any question of subordinate legislation arising therefrom to the notice of the Committee.

On receipt of the clarification from the Ministry concerned, the points will be re-examined critically in the light of the clarification and if the objection underlying any point is still not satisfactorily answered, it will be put up in the form of a self-contained memorandum for bringing out it to the notice of the Committee. In cases, where on receipt of satisfactory reply from the Ministry, it has been decided to drop the matter or where the Ministry *suo moto* amend the 'Order' and the reference file is to be closed, such instances of satisfactory amendments to 'Orders' are noted in the register.

An 'Order' will be examined from all points in view even though merits of the 'Order' may be involved. A note embodying the comments after such examination will then be submit so as to enable the officers to pass orders against each point.

Besides examination of Statutory 'Orders', every Bill introduced in or laid on the Table of Lok Sabha will be examined to see whether it seeks to delegate rule-making powers or seeks to amend an earlier Act.

The US/DS will also indicate in his decision as to whether any matter requires clarification from the Ministry and if so, a note on the subject will be obtained from the Ministry for the benefit of the Committee.

A note will be put up to the US/DS for final decision as to the points which are important enough to be brought to the notice of the Committee.