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## THE ROLE OF PUBLICATION IN DELEGATED LEGISLATION: A CRITICAL STUDY

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### ABSTRACT

*“Delegated legislation does not come into force until published – Griffith & Street”*

India unlike many other countries who adopted democracy as the creed of the Constitution, was able to continue as a democratic nation even after its 75<sup>th</sup> year of Independence. One of the major reasons for the same is the trust of the people in our Constitution and on other governing authorities. The three organs of the government, that is, the legislature, the executive and the judiciary play a very prominent role in the administration and rendering of justice that can be availed by the common citizens. The legislation is mainly done by the legislature and the authorities coming under these legislative wings proposes and made laws that are used for governing as. Sometimes the legislative powers are sub delegated from one person to another based on various circumstances. Here comes the importance of the aspect of delegated legislation. It is possible to pass these legislative functions to another person unless and until the law prohibits the same, but it is essential to make the concerned publication regarding the matters related to delegated legislation to the common public also. The problem with the publication of delegated legislation arises at many times in many cases in India itself and the Supreme Court also stated that unless the delegated legislation is published, it cannot be

enforced<sup>554</sup>. So, it is a necessary matter to publish the same towards the common public to let them know that so and so things are delegated from one authority to another.

**Keywords:** *Delegated Legislation, Publication of Delegated Legislation, Executive Authorities, Procedural Ultra Vires*

### I - INTRODUCTION

Legislation is one of the important areas of any form of governing system in the world. Through proper legislations only, we can make a good and sound society who is having sufficient prudence in the making of these laws. Thus, proper legislations must need to be there and it should not be against the common public policy which is still in prevalence at that particular society. India being a democratic nation is bound to follow the principles of natural justice and it should need to be transparent enough in the matters to which they are currently working at. The term legislation can simply be defined as the process or act of enacting certain laws by a defined body of government known as the legislators. The legislature may promulgate certain matters and it will be passed as a law or statute after it is passed in the parliament. This is how the legislature makes proper legislation.

Likewise, these things which are passed by the legislature can be sub delegated also. This process is known as the delegated legislation. The delegated legislation can simply be defined as the exercising the legislative power by a subordinate authority who will be acting as an agent or subordinate to the original legislative authority. There will be passing of powers from a higher authority to a much lower authority for exercising several matters. This is commonly known as the delegated legislation and it can be coined as the subordinate legislation, secondary

<sup>554</sup> Harla v The State of Rajasthan (1951 AIR 467, 1952 SCR 110)

legislation or the subsidiary legislation of the law made by an executive authority.

The concept of Publication is very important in the matters relating to delegated legislation. The publication of delegated legislation is considered to be a procedural formality that is essential in the matters relating to the delegation of powers from a higher authority to that of a lower authority. Thus, there should need to have proper publication of the relevant matters before it came into force because then only the common public will come to know about the said matter. The principles of natural justice should need to be given utmost importance and it should need to be protected by the government to the common citizens. The very justification for the matters published as law is that whether it is written or unwritten, it should need to be accessible to the public<sup>555</sup> and no restrictions should be imposed upon the matters relating to publication because it is considered to be a basic right of every citizen to know what is the actual law and how it is going to govern them as well.

## II - DELEGATED LEGISLATION

The delegated legislation is one among the very important areas in matters relating to the administration of the government departments as well as the effective functioning of the authorities under the said departments. When the function of the legislation is entrusted to organs other than the legislature by the legislature itself, the legislation made by such organs are particularly known as the delegated legislation.

The Delegated Legislation can be considered as an act of making or commissioning a delegate where there is a parting of powers by the person who grants the delegation to another person by conferring an authority to do certain things which otherwise

the said person has to do by himself.<sup>556</sup> Thus, it can be considered as a form of legislation in which it is made by a body of persons other than the ultimate sovereign in the parliament by virtue of the powers conferred by the said sovereign under the specified statute of legislation.

## III - MEANING OF PUBLICATION UNDER DELEGATED LEGISLATION

The publication can simply be defined as the act of notifying or publishing something with an intention to let them know something which will take place or going to happen in the mere future. The concept of publication is also an important matter in relation to the delegated legislation also. Even though the fundamental principle of "ignorantia juris non excusat" which means the "ignorance of law is no excuse", there is also a very strong connotation which can even stand as an anti-thesis to the concerned statement, that is, the common people or the public should need to have an access on the establishment and interpretation of a law and they all should need to be given with an opportunity to know the law in its purest form.

The major principle that is laid behind the concept of publication is that all the laws which ought either to be known by all or at least open to the knowledge of the whole world in such a manner, then no one will have the impunity to offend against the same under the mere pretence of ignorance.<sup>557</sup> According to Lord Atkin, it is not mandatory that everyone knows the law but we are presuming that everyone is having sufficient knowledge on the law. So, publication is an important matter which makes these laws known to the common citizens.<sup>558</sup>

## IV - THE IMPORTANCE OF PUBLICATION

<sup>556</sup> Sidhartha Sarawgi V Kolkata Port (2014) 16 SCC 248

<sup>557</sup> Jean Domar, The Civil Law in Its Natural Order, 1689

<sup>558</sup> Evans V Bartlam (1937 AC 473, 479)

<sup>555</sup> Wade & Forsyth, Administrative Law (2009) 759.

The publications are considered to be a cornerstone for bringing into the effect of a particular statute or enactment which was passed by the legislature. We should need to have the adequate means to publicise the delegated legislation because then the common people will not step into the wrong path in ignorance of the said rules which are applicable to them in a given situation.<sup>559</sup> The system of publication of the said matter should need to be very transparent and easily accessible to the common public because it should not only help them to know the concerned law but should need to act as an aid to easily locate the same when and where it is necessary to point out the importance of the said legislation. Even though the publication seems to be a simple thing and even if it can be done within some fraction of seconds, these are not being done by the concerned authorities as well as the entrusted officials who are bound to do the same. They are highly influenced by the concerned governing parties which may indirectly affects the freedom and independence of the official who was actually entrusted to do the same.

Sometimes, the government tries to cover up the laws by not enacting proper procedures for publishing a particular legislation or a statute. This is because the government may consider the fact that "a well-informed citizen is a potential danger to the government." The government may sometimes issue the publication of the said matter for the mere namesake of publishing by doing the same in a secret manner popularly known as the "mid night government orders" where the government may publish something but it will not be known to the common people and they will not be able to identify the same through an easy manner. Thus, publication is considered to be one of the very important factors in order to have a proper delegation. From time immemorial, the relevance of publication can

be seen throughout the making of laws, legislations and statutes in India from time to time. The very basic idea with regard to the publication is that, through the process of publication only, the general as well as the very common citizens of this nation will be able to find out something which is being stated by the government either impliedly or expressly. The government officials are duty bound to provide sufficient information to the general public through issuing public notices at the public places or by issuing the same in the official gazette of the country by following the required, rules, procedures, norms and standards which are being set up by the government from time to time. Thus, proper measures must need to be adopted by the government from time to time in order to have effective publication of such materials as specified by the law.

#### V - PUBLICATION: THE SCENARIO IN ENGLAND

There are clear cut provisions in England for properly publicising the laws that were passed and enacted by the parliament from time to time. Through the Statutes like The Rules Publication Act of 1893 and The Statutory Instrument Act of 1946, these publications are deemed to be mandatory and then only the common public would be aware of this delegated legislation.

The laws in England are very stringent and they clearly pointed out that even though an act or legislation or even any piece of law is passed on some day, it will come only into existence on the day in which the same was published.<sup>560</sup> Thus, the said order will come into operation only by the date of publishing the same in the relevant space where the common people can access them and get to know about the same in a detailed manner.

#### VI - PUBLICATION: THE SCENARIO IN UNITED STATES OF AMERICA

<sup>559</sup> MP Jain and SN Jain, Principles of Administrative Law, Volume I (2009) 190

<sup>560</sup> Johnson V Sargant (1918) 1 KB 101

The concept of publication came into the arena of legislative field of America only after the development of laws in 1930's. Before 1935, there was no specific or clear-cut law for regulating the matters relating to the publication of delegated legislation in US. Through the landmark decision in *Panama Refining Company V Ryan Case*<sup>561</sup>, the Supreme Court of America founded the need for an effective regulatory framework to make the publication a necessary in matters relating to delegated legislation as well as regarding the enactment of new laws. Thus, the Federal Register Act was passed in the year 1935 in order to publish all the regulations made by the government and the provisions for the publication of the matters relating to the delegated legislation was strengthened by the enactment of The Administrative Procedure Act in the year of 1946.

The Supreme Court further reiterated the same principle by stating that if a regulation made by the government is not published in accordance with the Federal Register Act of 1935, then it is deemed to be invalid irrespective of the fact that the persons charged with its contravention had actual knowledge of its contents or not.<sup>562</sup> Thus, the publication became a necessary and mandatory part in the performance of a good delegated legislation in US.

#### VII - PUBLICATION: THE SCENARIO IN INDIA

Unlike England or the United States of America, India is not having a clear-cut legislation to guide the principles of publication and no statute defines the importance of publication in matters related to delegated legislation. But the above principles relating to the publication laid down in the statutes of USA and UK is equally applicable to India. The Courts from time to time issued certain matters relating to the publication of delegated

legislation and have also treated some sort of publication of the delegated legislation is an essential part and requirement with regard to the enforcement, applicability and validity of the said law. Thus, Indian Courts from time to time passed certain judgments favouring the need and importance for having publication of delegated legislation and how the publication play an important role in the effective implementation of this delegated legislation.

#### VIII - PUBLICATION: WHETHER A DIRECTORY OR MANDATORY PROCEDURE?

The Supreme Court of India through various judicial pronouncements had clearly stated that the publication is considered to be a very necessary element while making the delegated legislations. The Court in *Harla V State of Rajasthan Case*<sup>563</sup> clearly stated that the promulgation or the publication of some reasonable sort of material is essential in every form of delegated legislation when it is assigned by the superior authority to the concerned subordinate authority.

The Supreme Court again stated the importance of this publication by stating that all the rules to be made under a particular Act or Statute should need to be notified in the Official Gazette and then only it will get the applicability to implement the same.<sup>564</sup> The Supreme Court of India in the year 1965 established a landmark judgement regarding the importance of Publication of a government notification and how it impacts the common citizens. In *State of Maharashtra V Mayer Hans George Case*,<sup>565</sup> the Supreme Court clearly stated that if a notification or government order is published in the Official Gazette and made known to the whole of India, then the ignorance pleaded by the respondent or accused is wholly irrelevant and there will be no violation of the principle of natural justice over here. Even though there are many contradictions which exists between the

<sup>561</sup> 79 L Ed 446: 293 US 388 (1934)

<sup>562</sup> *Hotch V United States* (1954) 212 F 2d 280

<sup>563</sup> AIR 1951 SC 467: 1952 SCR 110

<sup>564</sup> *Narendra Kumar V Union of India* (AIR 1960 SC 430: 2 SCR 375)

<sup>565</sup> AIR 1965 SC 722: 1 SCR 123

eminent jurists, political thinkers and other legal officials concerning to the status of publication as a mandatory or merely a directory one relies upon the facts and circumstances of each case. The government is duty bound to protect the interests of the society in a full-fledged manner and the said government must need to initiate certain policies and guidelines in order to protect the interest of the people to the fullest extent that they can do. Thus, publication plays a very important role in relating to the matters that are being discussed in front of the general public and in order to protect the general interest of the society, all forms of communications and other official or procedural matters from the side of the concerned government must need to be placed and given through official publications. If proper publications are there, the common people will get a more chance to represent their side if some wrongdoing, even by mistake, was committed from his or her side. Thus, we should need to say that, publication is considered to be one among the most important step or factor which affects the effectiveness of a delegated legislation. By listing under the preview of this new age era, we can say that publication seems to be a mandatory one rather than mere directive in nature since if it is being made mandatory, the government and the people can interact easily which helps to make a cordial relationship among each other.

The Supreme Court in *BK Srinivasan V State of Karnataka Case*,<sup>566</sup> stated that a particular act or regulation is valid even if it is not published as a required law anywhere but published in the Government Official Gazette. Thus, the predominant importance of Official Gazette can also be seen through the decision provided by the court of law.

#### **IX - MODE OF PUBLICATION**

The mode of publication differs from circumstances to circumstances and shifts its

nature from one situation to another. Sometimes, the publication will be of mandatory in nature, while sometimes the manner of publishing will be a directory one where the situation demands the same. Sometimes there will be a mix of these mandatory and directory features because if the statutory provision is regarding the imposition of tax, it is mandatory to get published while the manner in which the rules are going to get published is a purely directory one.<sup>567</sup> Thus, even if there are certain modes of publications, the basic crux or core of the concept of publication seems to be the same which is followed and deeply rooted under the principles of natural justice and it also impliedly connects the idea that all the officials should need to act in an unbiased manner where any forms of bias will leads to the violation of principles of natural justice.

#### **X - EFFECT OF PUBLICATION**

The Supreme Court through various judicial decisions upheld that the delegated legislation if promulgated or published, the same will take effect from the very date of such promulgation or publication. The Supreme Court through various decisions also held that if the notification or the concerned rule is published in the Official Gazette, the same will come into operation from the date of publication of the said order in the Government Official gazette.<sup>568</sup>

Thus, if the delegated legislation is not published at all, the defect goes to the root and makes the whole instrument invalid and ineffective. But, if it is not published in a particular manner only, it would not make the whole instrument or regulation wholly void but the Court will consider them to act in a proper manner as established by the system of law.

<sup>566</sup> AIR 1987 SC 1059; I SCC 658

<sup>567</sup> *Raza Buland Sugar Company Limited V Municipal Board, Rampur* (2014) 10 SCC 673

<sup>568</sup> *Pankaj Jain Agencies V Union of India* (1994) 5 SCC 198; AIR 1995 SC 360

## XI - CONCLUSION

The publication is the very important matter that must need to be established under the Delegated Legislation. The delegated legislation can take into effect only with a proper publication prior to the operation of the former takes place. Thus, the necessity and need of the publication of a subordinate or delegated legislation cannot be underestimated. So, the publication of delegated legislation can also be considered as an important element in upholding the principle of natural justice that are availed by the common citizens. This said process of publication helps the common man a lot to understand the law and have prudence on the same which helps him to be a legally prudent man about the circumstances of laws. Thus, through publication processes, no one will be ignorant of law and everyone will have the access to get justice by locating the essential spirit of the law.

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