

Confidential

COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTEENTH LOK SABHA)
(2009-2010)

TENTH REPORT

[ACTION TAKEN REPORT OF THE COMMITTEE ON THE RECOMMENDATIONS
/OBSERVATIONS CONTAINED IN TWENTIETH REPORT (2008-2009) (FOURTEENTH LOK
SABHA)]

(PRESENTED ON 18.8.2010)

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LOK SABHA SECRETARIAT

NEW DELHI

August, 2010/Sravana, 1932

COSL No.19

PRICE: Rs.

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and printed by the Manager, Government of India Press, Minto Road, New Delhi.

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2009-2010)

1. **Shri P. Karunakaran** **Chairman**
2. Shri Paban Singh Ghatowar
3. Shri Rajen Gohain
4. Shri D.B. Chandre Gowda
5. Shrimati Paramjit Kaur Gulshan
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12. Shri Hamdullah Sayeed
13. Shri Adhalrao Patil Shivaji
14. Dr. Rajan Sushant
15. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri S.C. Kaliraman - Addl. Director
3. Smt. Hema Joshi - Committee Officer

INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Tenth Report.

2. This Report relates to the action taken on the recommendations of the Committee contained in the Twentieth Report (Fourteenth Lok Sabha) (2008-2009) which was presented to Lok Sabha on 22 October, 2008.

3. The Committee also wish to place on record their appreciation of the valuable work done by the predecessor Committee.

4. The Committee considered and adopted this Report at their sitting held on 3.8.2010.

5. The summary of recommendations contained in the Twentieth Report and action taken reply of the Government thereon have been reproduced in Appendix I of the Report.

6. The Minutes of the sitting of the Committee relevant to this report are brought out in Appendix II.

7. An analysis of the action taken by Government on the recommendations contained in the Twentieth Report of the Committee (14th Lok Sabha) is given in Appendix III.

New Delhi;
August, 2010/ Sravana, 1932

**P. KARUNAKARAN,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION**

REPORT

This Report of the Committee on Subordinate Legislation deals with the action taken by Government on the recommendations contained in their Twentieth Report (Fourteenth Lok Sabha) which was presented to Lok Sabha on 22 October, 2008. The Twentieth Report dealt with the following Chapters: -

- I. Infirmities in University Grants Commission Inspection of Universities Rules, 2004.
- II. Enforcement of the Pravasi Bharatiya Bima Yojana, 2003 and the Pravasi Bharatiya Bima Yojana, 2006 without Statutory Authority.

2. The shortcomings observed during scrutiny of the rules mentioned in Chapters (I) to (II) above were brought to the notice of the Ministries concerned for their comments/necessary corrective action. The Ministries concerned have accepted those shortcomings and have rectified the same except in case of Para 2.17, in which even though the Ministry have accepted the recommendation, the implementation has not been completed. A statement showing the Action Taken by the Government on the recommendations contained in the Twentieth Report is given in Appendix-I

3. The Committee had given following recommendation in Para 2.17 relating to the Pravasi Bharatiya Bima Yojana, 2003 and the Pravasi Bharatiya Bima Yojana, 2006

“The contention of the Ministry of Law and Justice (Legislative Department) that the administrative Ministry’s initial proposal to notify the scheme under Section 43(2)(o) of the Act was not found acceptable as they felt that the aforesaid section deals with rule making power of the Central Government and the residual Clause (o) is to be invoked only for carrying out the provision of the Act where no express rule making aspect has been specifically mentioned. It was further clarified that the Act neither contained any specific enabling provision empowering the Central Government to issue a scheme of this nature nor did it empower the Protector of Emigrants to deny clearance to an emigrant on the ground of non-obtaining of the insurance cover. This would have resulted in dilution of the compulsory nature of the insurance scheme proposed. The Legislative Department, therefore, opined that the administrative Ministry may either amend the Act by incorporating therein suitable enabling provisions for insurance of the proposed scheme or issue a non-statutory scheme in exercise of the executive powers conferred by Article 73 of the Constitution in view of the urgency involved. Though a different view was taken by the representative of the Legislative Department during oral evidence that the scheme could have been framed under section 43(2)(o) of the Emigration Act, the Department’s subsequent post-evidence reply reiterated their earlier stand that the scheme do not specifically fall within the rule-making provision of the Act. The Ministry also further submitted that they do not have any legal or constitutional objection to carry out amendment in the relevant provisions of the Act with retrospective effect to insert express provisions for framing such schemes. Similarly, the Ministry of Overseas Indian Affairs in their subsequent post-evidence reply stated that in the absence of any enabling provision under the Emigration

Act, the Ministry proposes to insert a new section 29A while amending the Act which would among other provide for specific enabling provision for framing of schemes for emigrants. While the powers of the Central Government to issue an executive scheme in exercise of their executive powers in an emergent situation is absolutely not in contention, the Committee feels that these should have been given proper statutory backing thereafter. The Committee strongly deprecate the failure of the administrative Ministries to take any appropriate initiative in this direction even after a lapse of five years and also find their action of notifying the scheme of 2006 yet again as an executive scheme even in the absence of any emergent situation with the same mistake of publishing it as a GSR is highly unjustifiable. It was only after the taking up the matter by the Committee repeatedly that both the Ministries examine the matter in the right perspective and agreed to incorporate necessary statutory backing to the scheme. The Committee, therefore, recommend that the amendments to the Act as proposed by the Ministry may be carried out expeditiously.

4. The Ministry of Overseas Indian Affairs in their reply dated 2.1.2009 have stated as follows:-

“The directions of the Committee on Subordinate Legislation has been noted. The proposal of the amendment of the Emigration Act, 1983 is being expedited in the Ministry. The proposed amendments include the insertion of the new provision as under:-

‘Section 29A(1) for promotion of overseas employment and protection and welfare of emigrants, the Central Government may take such welfare and promotional measures, including entering into international treaties or agreements, establishing a Welfare Fund, or making any insurance Scheme, in such manner, as may prescribed.’

5. Further, the Ministry of Overseas Indian Affairs in their reply dated 4.5.2010 have stated as follows:-

“This Ministry is processing for the introduction of a new Emigration Management Bill, 2010 in the Parliament to replace the existing Emigration Act, 1983. The proposal after vetting and concurrence of the Ministry of Law was forwarded to the Cabinet Sectt. for consideration and approval of the cabinet. However, the Cabinet Sectt. based on the advice of the PMO, has directed this Ministry for submitting a proposal for consideration of the Committee of Secretaries. Accordingly, necessary action is being taken in this Ministry. The provision proposed in the new bill is as under:

‘Clause 22 (1): The Central Government may, for the purpose of facilitation of emigration and protection and welfare of emigrants, take such measures, including entering into treaties or agreements with foreign countries, establishing a welfare fund and making insurance schemes, as may be necessary, for the said purpose.’

6. The Committee may note with satisfaction that the Ministry of Overseas Indian Affairs have accepted the recommendation made by the Committee on Subordinate Legislation. The Committee may desire that as proposed, the Ministry may bring Emigration Management Bill, 2010 without further delay. Further, the Committee may also desire that the Committee may be apprised of each and every step taken by the Ministry until the new Act comes into force.

New Delhi:
August, 2010/Sravana, 1932

P. KARUNAKARAN,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

APPENDIX – I

(vide Para 5 of Introduction of the Report)

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/OBSERVATIONS CONTAINED IN THE TWENTIETH REPORT OF THE COMMITTEE (14th LOK SABHA)

I. Infirmities in University Grants Commission Inspection of Universities Rules, 2004.

Recommendation (Para 1.9)

The UGC (Inspection of Universities) Rules, 2004 are significant and have a bearing on the quality of education in Universities. There are, however, a number of shortcomings in the rules which make them ambiguous and ineffective. The Committee note that the Rule 3 of the said rules which, *inter-alia*, deals with composition of the Inspection Committee, does not specify its general composition and strength. Besides, sub-rules (i) & (iii) of Rule 3 have been so worded that can dilute the periodicity of inspection specified therein. As a result, the inspection requirement has not been made mandatory and the authorities can not be made accountable even if the periodicity of inspection specified therein is not adhered to. Furthermore, the sub-rule (iii) of Rule 3 is not specific as to whether the inspection is to be conducted every two years or every three years and without any specific clause the sub-rule lacked objectivity. Use of ambiguous and vague expressions in the inspection rules vitiates the very purpose and objective of the inspection process and makes the rules ineffective and defunct. When the above infirmities in the rules were pointed out to the Ministry of Human Resource Development (Deptt. of Secondary and Higher Education), they stated that they are in the process of rectifying all these deficiencies and the observation of the Committee in this regard would be taken into account while redrafting the rules on these points. The Committee, therefore, desire that the Ministry should do the needful in the matter at the earliest under intimation to the Committee.

Reply of the Ministry

The University Grants Commission (Inspection of Universities) Rules, 2004 has been reviewed in the light of the observation made by Hon'ble Committee on Subordinate Legislation and new rules namely the University Grants Commission (Inspection of Universities) Rules, 2009 have been framed in supersession of the 2004 Rules. The new rules have been sent to Government Press for publication in the official gazette. In the new Rules revised provisions have been made regarding the composition of the Inspection Committee as also the periodicity of inspection. The new rules contain the following provisions:

3. Inspection Committee- (1) The Commission shall appoint an Inspection Committee, as provided under section 13 of the Act, for the purpose of ascertaining the financial needs of a University or its standards of teaching, examination and research, or for both.

(2) The Committee shall consist of the following members, namely:-

- (i) Two Vice-Chancellors, either serving or retired, from any Central or a State University.
 - (ii) Not less than three and not more than five members, out of which one member shall be a woman, from amongst professors in any University, having special knowledge of the courses being conducted in the University to be inspected:
Provided that none of the members of the Committee under clauses (i) and (ii) shall be employee, whether past or present, of the University to be inspected.
 - (iii) One member from each of the Councils exercising jurisdiction over the courses being conducted in the University to be inspected.
 - (iv) One member from National Academic and Accreditation Council or an equivalent authorized accreditation agency.
- (3) The Commission shall nominate one of the members appointed under clause (i) of sub-rule (2) to act as the Chairman of the Committee.
 - (4) The Commission shall nominate one of the members appointed under clause (ii) of sub-rule (2) to act as the Member-Secretary of the Committee.

4. Periodicity of Inspections:- The periodicity of inspections of a University shall be as under:

- (1) A University which has been accredited by National Academic and Accreditation Council or an equivalent authorized accreditation agency and which has been rated at class "B" or above or its equivalent, need not be inspected by the Commission till the date of validity of such accreditation.
- (2) A University which has been in existence for a period not exceeding five years and not covered under sub-rule (1) shall be inspected annually.
- (3) A University which has been in existence for a period exceeding five years and not covered under sub-rule (1) shall be inspected once in every two years.

Provided that a University may be inspected before the expiry of the period specified in this rule on account of any exigency, to be specifically recorded by the Commission, which, in the opinion of the Commission, warrants such inspection.

5. Scheme of Inspection of University- (1) The Commission shall notify a scheme for inspection of all the Universities in the month of January every year.
- (2) The scheme of inspection prepared under sub-rule(1) shall also be made available on the website of the Commission for general information.
 - (3) The Commission shall communicate to the University in the Form annexed to these rules, the period during which the inspection shall be carried out by the Committee.

[Ministry of Human Resource Development O.M. No. 4-41/2003-UI/UI (A)
dated 21.4.2009]

Recommendation (Para 1.15)

Rule 7A, of the University Grants Commission (Inspection of Universities) Rules, 2004, mandates that cases of major financial irregularity or violation of standards of teaching, examination and research should be brought to the notice of the University. It may, however, be observed that under rule 6(a), the Inspection Committee will have to associate nominees of the University who may include the Vice-Chancellor or Registrar. The Committee feel that for the purpose of unearthing irregularities and violation of standards, the Inspection Committee ought to be independent of the University which is being inspected. Association of the highest functionaries of the University in the Inspection Committee could obviously be detrimental to the very objective of unearthing financial irregularities. The Ministry have now proposed to bring further amendments in the rules which will specifically provide in the rules that association of nominees of the University will be restricted only for giving information to the queries raised by the Inspection Committee. The Committee feel that the provision in the existing Act is not sufficient to properly check financial irregularities. The Committee, therefore, desire that the Ministry of Human Resource Development should bring further requisite amendments in the existing provisions in the Act/Rules in consultation with the Ministry of Law and Justice so as to remove the lacunae and make these provisions in the Act/Rules legally sound.

Reply of the Ministry

Rule 6 and Rule 7 of the new rules provide for the following:

Rule 6: Consultations with the University:- (1) The Committee shall hold consultations with the University to be inspected so as to facilitate the University to provide its views on the subject matter of such inspection.

(2) For the purpose of such consultations, the University shall nominate not more than three representatives who may include the Vice-Chancellor or the Registrar or such other officers or teachers as may be nominated by the Vice-Chancellor of the University, and who shall represent the views of the University, and their names shall be communicated to the Commission.

(3) If the Committee proposes to physically inspect any faculty or department or any part or parts of the University, the nominees of the University shall be associated in such inspection but the nominees of the University shall not be considered as members of the Committee.

(4) Nothing in this rule shall preclude the Committee from having discussions with such other employee(s) or visiting faculty of the University as may be considered necessary by the Committee for arriving at the facts.

Explanation: For the purpose of this rule, the words “consultations” or “associations” shall mean the holding of discussions or seeking information or obtaining clarifications to queries that may arise during the course of the inspection process but shall not provide a right to the nominees of the University to be part of the internal deliberations of the Committee for the purpose of arriving at any conclusion or providing any recommendation to the Commission.

Rule 7: Time frame for Inspection Process:- (1) The Committee shall submit its detailed report along with recommendations within one month from the date the Commission has fixed for inspection under sub-rule (3) of rule (5) and in case any grave financial irregularity is noticed

during the inspection process, the Committee shall specifically draw attention to such irregularity in its report.

(2) The report of the Committee shall include the observations or comments or clarifications, if any, provided by the nominees of the University associated with the inspection under rule 6.

(3) The Commission shall forthwith, but not later than fifteen days from the date of receipt of the report of the Committee, communicate the report along with the recommendations to the University concerned for submitting a plan of action for acting upon the recommendations or such other comments or opinions as the University may like to provide.

(4) The University shall submit its plan of action or such other comments or opinions within a period of one month from the date of receipt of communication from the Commission under sub-rule (3), failing which the Commission shall proceed further on the assumption that the University has no comment or opinion to offer on the report and its recommendations.

(5) The Commission shall consider the response, if any, received from the University and recommend to the University, the action to be taken as a result of such inspection process, within one month from the date of receipt of response.

Provided that in case the Commission decides to provide a time period exceeding six months for acting upon any recommendation or set of recommendations, it shall specifically record the time period so provided and the reasons thereof.

The above provisions address the concern shown by the Hon'ble Committee.

[Ministry of Human Resource Development O.M. No. 4-41/2003-UI/UI (A)
dated 21.4.2009]

Recommendation (Para 1.18)

The Committee note that under Section 13(2) of the University Grants Commission Act, 1956, the University Grants Commission is required to prescribe the manner in which the University will be associated with the inspection. The rules under reference have, however, stipulates that the duration and manner of association of the representatives of the University will be determined by the inspection Committee after consultation with the University. This provision amounts to sub-delegation of power which is not envisaged in the parent Act. The Committee, however, note that on being pointed out, the Ministry of Human Resource Development (Department of Secondary and Higher Education) have now proposed to prescribe the manner in the Act/Rules in which the University is to be associated and also to stipulate in the rules the exact purpose for such association. The Committee desire that the Ministry should hasten the process of finalization of proposed amendments.

Reply of the Ministry

The manner in which the University is to be associated has been revised as prescribed in Rule 6 of the University Grants Commission (Inspection of Universities) Rules, 2009

[Ministry of Human Resource Development O.M. No. 4-41/2003-UI/UI (A)
Dated 21.4.2009]

Recommendation (Para 1.19)

The Committee urge the Ministry to examine the issues afresh from all angles in consultation with their legal department as well as the Ministry of Law and Justice so that the existing provisions in the Act/Rules are suitably reformulated and amended with a view to remove the shortcomings as pointed out and also to make them legally sound.

The Committee further desire that copies of the amended Act/Rules be furnished to them after their notification for their perusal.

Reply of the Ministry

The new rules namely the University Grants Commission (Inspection of Universities) Rules, 2009 have been issued in consultation with the Legislative Department, Ministry of Law and Justice.

[Ministry of Human Resource Development O.M. No. 4-41/2003-UI/UI (A)
dated 21.4.2009]

II. Enforcement of the Pravasi Bharatiya Bima Yojana, 2003 and the Pravasi Bharatiya Bima Yojana, 2006 without Statutory Authority.

Recommendation (Paras 2.18 & 2.19)

2.18 The Committee are also surprised to note the wavering opinion of the Legislative Department of the Ministry of Law and Justice on such a basic question as ascertaining whether enabling provisions for promulgation of the Scheme exists in the Act or not. The Committee observe that being the nodal agency entrusted with the statutory duty of vetting of Subordinate Legislation, the Legislative Department have an important role in offering right guidance to the administrative Ministries and as such should have been in a position to give the final word in such matters. The error of publishing the executive scheme as GSR in the wrong Part of the Gazette leading to avoidable confusion in the instant case could have been easily detected and pointed out by the Legislative Department at the vetting stage, had the Department been a little more vigilant. While observing that there appeared to be loopholes in the vetting process, the Committee recommend that the present process should be evaluated afresh so that such discrepancies are eliminated at the draft stage.

2.19 The Committee also regret to note that the Legislative Department have not so far issued any comprehensive guidelines or instructions on the lines of the 'DOPT guidelines on framing Recruitment Rules', which the administrative Ministries/Departments should keep in view while framing subordinate legislation. On a pointed query during the evidence, the representative of Legislative Department referred to an O.M. dated 24th January, 2008 which only describe in brief the scope of vetting of draft rules/regulations by the Ministry of Law and Justice. The Committee, therefore, strongly recommend that the Ministry of Law and Justice should draw up such detailed instructions at the earliest which would go a long way in not only rendering right guidance to the Government Departments/Ministries while formulating subordinate legislations but also remove scope for omissions and errors in the vetting

process of the Department itself, which have been found by the Committee time and again. The Committee would await action taken in the matter within a period of three months from the date of presentation of the Report.

Reply of the Ministry

As directed by the Hon'ble Committee on Subordinate Legislation in para 2.19 of its Twentieth Report (14 LS), the Legislative Department has prepared guidelines to be followed by the administrative Ministries/Departments while framing subordinate legislations and also circulated the same to all the administrative Ministries/Departments **(Appendix-IV)**.

[Ministry of Law & Justice (Legislative Department)
O.M. No 13(17)/2007-Leg.I]

APPENDIX-II
(vide Para 6 of Introduction of the Report)

CONFIDENTIAL

MINUTES OF THE TENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2009-2010)

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The Committee sat on Tuesday, the 3rd August, 2010 from 1500 to 1600 hours in Chairman's Room No.143, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

LOK SABHA

2. Shri Paban Singh Ghatowar
3. Shri Mangani Lal Mandal
4. Shri Sanjeev Ganesh Naik
5. Shri Rajaram Pal
6. Shri Anantha Venkata Rami Reddy
7. Shri Hamdulla Sayeed
8. Shri Adhalrao Shivaji Patil
9. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri J.S. Chauhan - Director
2. Shri S.C. Kaliraman - Additional Director
3. Shri Raju Srivastava - Deputy Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee.
3. The Committee, thereafter, took up for consideration the draft Tenth, Eleventh & Twelfth Action Taken Reports and adopted the same without any modifications. The Committee also authorized the Chairman to present the same to the House.

The Committee then adjourned.

APPENDIX-III

(vide para 7 of Introduction of the Report)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE TWENTIETH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

I.	Total No. of recommendations/observations made	7
II.	Recommendations that have been accepted by the Government [<u>vide</u> recommendations at Sl. Nos. 1.9, 1.15 1.18, 1.19, 2.17, 2.18 & 2.19]	7
III.	No. of recommendations which the Committee do not want to pursue in view of Government reply	Nil
IV.	Percentage of recommendations accepted	100%

APPENDIX-IV

GUIDELINES FOR FORMULATING SUBORDINATE LEGISLATION BY THE GOVERNMENT DEPARTMENT/MINISTRIES

1. Subordinate Legislation.

In case of subordinate legislation, generally there will be enabling provision empowering the subordinate authorities to make rules, regulations and issue notifications, etc., under the Parent Act. In the absence of it, the question is whether the Parent Act should be amended by incorporating therein a suitable enabling provision or issue a non-statutory order in exercise of executive power conferred under article 73 of the Constitution? There are different views taken by the various Ministries including Ministry of Law and Justice. Therefore, the Committee on Subordinate Legislation (14 Lok Sabha, 2008) in its 20 report directed the Legislative Department to make comprehensive guidelines or instructions, which the administrative Ministries or Departments should follow while framing subordinate legislation.

1.2 Subordinate Legislation is that which proceeds from any authority other than the sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority. They may be regarded as having their origin in a delegation of the power of Parliament to inferior authorities which in the exercise of their delegated functions remain subject to control of the sovereign legislature. The legislature while delegating its power usually lay down the criteria or standards so as to enable the delegate to act within the framework of statute. The procedural powers are, therefore, normally let to be exercised by the executive by reason of delegated legislation.

1.3 The legislature may lay down the policy of the legislation and then leave it to subordinate agencies or some executive authority, the power of making rules and regulations for filling the details to carry out purposes of the Parent Act. When legislative power is so exercised by the administrative or other subordinate body under statutory authority, it is known as subordinate legislation. On the part of the legislature, it is delegated legislation, but it is a permissible delegation, if it had laid down the policy.

[In re-Delhi Laws Act, 1951 SCR, 474], *Inder Singh v. State of Rajasthan* [1957 SC 510 (515)], *Hamdard Dawakhana v. Union of India* [1960 SC 554(556)], *Sri Ram v. State of Bombay* [1959 SC 459(473-4)].

While subordinate legislation refers to the process of making rules and regulations by an administrative or other subordinate authority for the carrying out of the purposes of statute and for its detailed application, conditional legislation refers to a statute which authorizes an administrative authority to determine when or where the provisions of the statute shall become operative. It is generally called as conditional legislation.

1.4 The term 'delegation legislation' is used in two senses: it may mean (a) exercise by a subordinate agency of the legislative power delegated to it by the legislature, or (b) the

subsidiary rules themselves which are made by the subordinate authority in pursuance of the power conferred on it by the legislature.

1.5 The expression 'subordinate legislation' would mean the act of making the statutory instruments by the subordinate body in exercise of the power delegated by the legislature and the statutory instruments, if authorized by the Parent Act.

1.6 Kinds of Statutory Instruments

The expression "subordinate legislation" covers variety of matters and includes rules, regulations, notifications, bye-laws, orders or schemes issued by the authorities to whom the powers to frame them are delegated. The nomenclature depends upon the terminology specified in the enabling section or provision of the Parent Act. Usually following are the kinds of subordinate legislations, namely:-

- (i) **Rule:** The expression "rule" is defined in sub-section (51) of section 3 of the General Clauses Act, 1897, as a "rule made in exercise of a power conferred by any enactment and shall include a Regulation made as a rule under any enactment". A rule is of general application in the same way as a statute, differing only in the nature of the authority by which it is created.
- (ii) **Regulations:** Regulations are some what inferior to rules because they are generally made by a subordinate authority like a Board or other statutory body or authority functioning under a statute. Some times the power to make rules as well as regulation is vested in the same authority, e.g. the Central Government by section 29 and 30 of the Mines Act, 1923. In such a case the apparent distinction between the two powers is that while the rules deal with major problems arising under the Act, the regulations are to provide for minor and subsidiary matters. Regulations made in exercise of a statutory power, amounts to a "rule" within the meaning of section 24 of the General Clauses Act, 1897.
- (iii) **Bye-laws:** Bye-laws are also instrument of subordinate legislation and termed so, when they are framed by the Municipal bodies, Corporations or other local self governments. Even though they are not different from rules or regulations, they are termed so to easily identify them from the rules and regulations when they are framed by the local self governments under the powers conferred on them by an Act of Parliament.
- (iv) **Order:** An Order, broadly speaking, is specific and may be limited in its application. The form of an order is used for notifying an action taken by the Government in accordance with the directions or powers conferred by an Act of Parliament. The Order may be administrative or legislative in nature. The distinction between legislative and administrative is often not clear. Whether the order of the Government falls within the legislative or administrative,

depends on the type and quantum of administrative discretion vested in the administrative authority and also on the content of procedural conformity.

- (v) **Notification:** Generally, the statutes define “notification” to mean notification published in the Official Gazette. Notifications may be of two kinds. Most Government orders are notified so that the public may know them. All of them may not be subordinate legislation. Only such notifications have the force of law which are a species of subordinate legislation passed by a body having authority to promulgate them and which lay down some rules of conduct for persons in the community to obey. Orders making appointments, postings and transfers of officers which are often notified in the Gazette cannot obviously be subordinate legislation but instruments of executive action.
- (vi) **Scheme:** Scheme may be of two kinds. It is a form of subordinate legislation containing a body of rules binding on persons with whom the rules are concerned and in such a case, if passed by an authority having the necessary power to do so, and enforceable in courts of law. The other kind of scheme may be, purely executive in character and does not contain any rules of conduct for anybody to follow.

2. Essential Legislative Functions

The fields of legislation and subordinate legislation are treated as separate fields and distinct though at times it is difficult to draw a line between them. It is not open to the legislature to delegate its essential legislative functions which consists in the determination of a choice of the legislative policy and of formally enacting that policy into a binding rule of conduct [In re Delhi Law Case AIR 1951 SC, 332]. The following are the essential legislative functions, which cannot be delegated, namely:-

- (1) Declaring what the laws shall be in relation to any particular territory or locality.
- (2) Extending the duration or operation of an Act beyond the period mentioned in the Act itself.

However, this power may be delegated to the executive if sufficient guidance for the exercise of this power and also the maximum period of extension are laid down in the Act.

- (3) Repealing or amending the law.
- (4) Modifying any existing or future law in any essential feature so as to involve change of policy.
- (5) Power to impose tax.

- (6) Power to levy fees.
- (7) Power to prescribe punishments. The making of a particular act into an offence and prescribing punishment for it is an essential legislative function and cannot be delegated by the legislature to the executive. However, if the legislature lays down the standards or principles to be followed by the executive in defining an offence and provides the limits of penalties, such delegation is permissible.

There are two important safeguards, if provided, there may not be any objection to prescribe the punishments through the delegated legislation. They are:-

- (i) The legislature must determine the maximum punishment which the rule-making authority may prescribe; and
 - (ii) If such power is delegated to any authority other than the State or Central Government, the exercise of the power must be subject to the previous sanction or subsequent approval of the State or Central Government, as the case may be
- (8) Power to allow exemption: After laying down the policy of law and the standards to be applied in the administration, the legislature may authorize the Executive to make rules or regulations prescribing classes of cases in which relief or exemption may be granted.
 - (9) Removal of difficulties: When the legislature passes an Act, it cannot foresee all the difficulties which may arise in implementing it. The executive, is therefore, empowered to make necessary changes to remove such difficulties. The provision has been nicknamed as Henry VIII clause. The Committee on Ministers' powers was of the opinion that it would be dangerous in practice to permit the executive to change an Act of Parliament.

3. Subordinate Legislation:

While making subordinate legislation, the following guidelines may be considered by the administrative Ministries and Departments.

- (i) **Appointed day clause:** Several statutes contain a commencement clause which empowers the Government to issue a notification so as to appoint a day for the Act to come into force. In such cases, the operation of the Act depends upon the decision of the Government.
- (ii) **The power to extend the operation of an Act:** It was settled that power to extend the duration of a statute is not an essential legislative power and may

be delegated. When such a power exists in the parent statute, the notification for exercising such power may be issued (AIR 1957 SC 510).

- (iii) **Power to adopt the existing statutes:** There is no unconstitutional delegation where the Legislature permits the Executive, at its discretion, to adopt (with incidental changes such as name, place and the like) existing statutes and to apply them to a new area, without modifying the policy underlying the statute and such a power may be exercised by subordinate legislation if so permitted in the parent Act.
- (iv) **Exemption:** The power to exempt from the operation of a statute may be exercised, if so delegated in the statute.
- (v) **Alteration:** The power to alter the applicability of the Act, by amending the Schedule by a subordinate legislation may be exercised, provided that the standards for guidance are specified in the Act.
- (vi) **Power to amend, modify or repeal:** The rules may be laid before Parliament before they are to come into force if the provisions of the parent Act so required and Parliament has the power to amend, modify or repeal them.
- (vii) **Conformity with the Constitution:** The statutory instruments must not violate the provisions of the Constitution. The rule making power is subject to the Constitutional provisions which limit the powers of the legislature itself.
- (viii) **Conformity with the enabling Act:** Every rule, regulation, order, bye-law or scheme framed under an Act of Parliament must be *intra vires* the provisions of the Act, under which it has been framed. Hence, the delegatee can not override the Act either by exceeding the authority or by making provisions inconsistent with the Act.
- (ix) **Retrospectivity of delegated legislation:** Unless the Parent or enabling Act specifically gives power to make subordinate legislation with retrospective effect, no such retrospective effect is to be given. If retrospective effect is to be given, then, an explanatory note to the effect that nobody's interest will be adversely affected by the retrospective effect has to be appended to the draft subordinate legislation. This explanatory note should, however, be so printed as not to form part of the draft notification or rules, etc.
- (x) **Publication:** Publication is essential for the validity of subordinate legislation. Rules or regulations can be binding on the people only after their publication in the Official Gazette. (Harla Vs. State of Rajasthan, AIR 1951 SC 467).
- (xi) **Parts of Gazette of India in which subordinate legislation should be published:** While publication of the notifications in the Gazette of India the

administrative Ministries shall keep in mind the various parts of Gazette of India as mentioned below:-

- (A) Part I, Section 1.- Notifications relating to Non-Statutory Rules, Regulations, Orders and Regulations issued by the Ministries of the Government of India (other than the Ministry of Defence) and by the Supreme Court.
- (B) Part I, Section 2. – Notifications regarding Appointments, Promotions, Leave, etc. of Government Officers issued by the Ministries of the Government of India (other than the Ministry of Defence) and by the Supreme Court.
- (C) Part I, Section 3. – Notification relating to Resolutions and Non-Statutory Orders issued by the Ministry of Defence.
- (D) Part I, Section 4. – Notifications regarding Appointments, Promotions, Leave, etc. of Government Officers issued by the Ministry of Defence.
- (E) Part II, Section 1. – Acts, Ordinances and Regulations.
- (F) Part II, Section 1-A – Authoritative texts in Hindi languages of Acts, Ordinances and Regulations.
- (G) Part II, Section 2. – Bills and Reports of the Select Committee on Bills.
- (H) Part II, Section 3, Sub-section (i) – General Statutory Rules (including Orders, Bye-laws, etc. of general character) issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).
- (I) Part II, Section 3, Sub-section (ii) – Statutory Orders and Notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).
- (J) Part II, Section 3, Sub-section (iii) – Authoritative texts in Hindi (other than such texts, published in Section 3 or section 4 of the Gazette of India) of General Statutory Rules and Statutory Orders (including Bye-laws of a general character) issued by the Ministries of the Government of India (including the Ministry of Defence) and by Central Authorities (other than Administration of Union Territories).

- (K) Part II, Section 4. – Statutory Rules and Orders issued by the Ministry of Defence.
- (L) Part III, Section 1. – Notifications issued by the High Courts, the Comptroller and Auditor General, Union Public Service Commission, the Indian Government Railways and by Attached and Subordinate Offices of the Government of India.
- (M) Part III, Section 2. – Notifications and Notices issued by the Patent Office, relating to Patents and Designs.
- (N) Part III, Section 3. – Notifications issued by or under the authority of Chief Commissioners.
- (O) Part III, Section 4. – Miscellaneous Notifications including Notifications, Orders, Advertisements and Notices issued by Statutory Bodies.
- (P) Part IV. – Advertisements and Notices issued by private individuals and private bodies.
- (Q) Part V. – Supplement showing statistics of Births and Deaths, etc. both in English and Hindi.
- (xii) **Publication of the amending notifications, orders etc.** The amending notifications/orders/rules/regulations/bye-laws, etc., should be published in the same part of the Gazette in which the principal notification/order/rules/regulations/bye-laws had been published.
- (xiii) **Rule Making Power:** When rule making power is conferred by the statute in general terms “for the purposes of carrying out the provisions of the Act”, the purposes of the Act must be determined with reference to all the provisions of the Act read together, before holding any particular rule to be *ultra vires*. Where a specific power is conferred without prejudice to the generality of the general power already specified, the particular power is only illustrative and does not, in any way, restrict the general powers.
- (xiv) **Preamble:** Precise authority should be cited in the subordinate legislation to enable one to know whether the subordinate legislation has been framed under due legal authority and within the limits laid down in the Parent law.
- (xv) **Previous publication:** The subordinate legislation must be published in draft form before making it if the Parent Act requires previous publication of it. When Act gives time to the public to send their comments on the draft rules, sufficient time should be given to them to study the draft and send their comments.

- (xvi) **Commencement clause:** A uniform practice should be followed with respect to the commencement clause. It would be better if the date of coming into force of the rules is notified in all cases through a sub-rule in the rules themselves to obviate any scope of confusion in the minds of the persons for whose benefits the rules are framed.
- (xvii) **Corrigendum:** The Ministries/Departments should carefully check the published rules and issue corrigendum if necessary for removing typographical or clerical errors. It should be published within 15 days of the publication of the rules etc., in which errors are found.
- (xviii) **Footnote:** Giving S.R.O numbers of previous amendments and the original rule and the SRO numbers of the subsequent amendments should be cited in a foot-note to the amending rules.
- (xix) **Laying on the Table:** In order to have Parliamentary control over the subordinate legislation, it is required to lay the same before the Parliament or State Legislature, as the case may be, within the period specified therein.
- (xx) **Requirements and intentions of the administrative Ministry:** Before publishing the rules etc., the administrative Ministry may satisfy themselves that the draft rules, etc., are in accordance with the provisions of the Parent Act and their requirements.
- (xxi) **Sub-delegation:** The cardinal principle of law "*delegatus non potest delegare (a delegate cannot further delegate)*" should be kept in mind while framing subordinate legislation. If the Parent Act permits sub-delegation to Officers or Authorities not below a particular rank, then the power can be delegated only to those Officers or Authorities.
- (xxii) **Consultation:** Some times the Parent Act may require the authority to which powers are delegated to consult the affected interests before making the rules. The opportunity offered for such consultation must be real. It usually requires the rules to be given proper publicity by notification in the Official Gazette. While making such provision it has to be ensured that sufficient time is given to the public to file objections and suggestions and if possible the rules must be published in the Official Gazette to satisfy the requirement of Section 23 of the General Clauses Act, 1897.
- (xxiii) **Similar manner and conditions:** Where a power to issue rules is conferred, then that power includes a power, "exercisable in the like manner and subject to the like sanctions and conditions, if any, to add, to amend, vary or rescind any rule so issued (section 21 of the General Clauses Act, 1897). Therefore,

subordinate legislation should be amended in the like manner in which it was made.

- (xxiv) **Saving clause:** While superseding the existing rules, a saving clause “except as respects things done or omitted to be done before such supersession” should be inserted, so as to save the past actions taken and specific saving clause should be inserted if the administrative Ministry intends to save such action or proceedings already initiated.
- (xxv) **Executive order:** Statutory rule should not be amended by an executive order.
- (xxvi) **Year of publication:** The year of publication and the year in the short title should be the same.
- (xxvii) **Number of amendments:** If more than one amendment is carried out in a particular year then, the amendment number should be given in reference to that year only.
- (xxviii) **Plain language:** As far as possible the plain English should be used as a language in drafting the provisions of subordinate legislation. The principle of one sentence in a rule should be followed. The rule, sub-rule, clause, sub-clause, item, sub-item, paragraph and sub-paragraph should be properly numbered as under:
Example: I(1)(a)(i)(A)(I).
- (xxix) **Repetition of the provisions:** The provisions specified in the Parent Act need not be mentioned in the subordinate legislation.
- (xxx) **Referential legislation:** Referential subordinate legislation should be avoided. As far as possible, the subordinate legislation should be self contained.
- (xxxi) **Framing of Rules:** Rules should be framed within six months after the commencement of the Act.

4. **Executive action of the administrative Ministry**

Article 73 of the constitution provides that, subject to the provisions of the constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive action so the administrative Ministry would be subject to such action which is not covered by any statute or by any subordinate legislation made thereunder or contrary to any provision of the statute or does not violate any prohibition.

Therefore, in the absence of statutory provisions or statutory rules or where such rules are silent, it is competent for the Government, in exercise of its existence power, to make

administrative rules and such non-statutory rule shall, to that extent, be binding on the parties (See D.D. Basu, Shorter Constitution of India, 14th edition, 2009 at page 669).

5. The above guidelines shall be subject to judicial pronouncements, recommendations of the Committee on Subordinate Legislation and amendments to the Parent Act providing differently than the above guidelines.