Legislation—Defined

The term 'legislation' is derived from latin words, *legis* meaning law and *latum* which means "to make" or "set". Thus the word 'legislation' means 'making of law'. Legislation is that source of law which consists in the declaration of legal rules by a competent authority.

The term 'legislation' has been used in different senses. In its broadest sense, it includes all methods of law-making. However, in its technical sense, legislation includes every expression of the will of the legislature, whether making law or not. Thus ratification of a treaty with a foreign State by an Act of Parliament shall be considered law in this sense. But in strict sense of the term, legislation means enacted law or statute law passed by the supreme or subordinate legislature.

Jurists have expressed divergent views about legislation as a source of law. According to Bentham and John Stuart Mill, legislation includes both, the process of law-making and the law evolved as a result of this process. The term 'legislation', is, however, restricted to a particular form of law-making, namely the declaration of rules of law in statutory form by a competent authority. It denotes promulgation of law by the legislature of the State. The law that has its source in legislation is called the enacted law or statute law.

Prof. Gray pointed out that legislation includes "formal utterances of the legislative organs of the society".

T. E. Holland has interpreted the term legislation in its widest sense and observed, "the making of general orders by our Judges is as true legislation as

carried on by the Crown". In his view, in legislation, both the contents and the rules are devised and legal force is given to it by Acts of the sovereign power which produce written law.

Referring to legislation as a source of law in England, Blackstone pointed out that the law that has its source in legislation which may be most accurately termed as *enacted law*, and all other forms may be distinguished as unenacted law. In England, the former is called *statute law* while the latter as *common law*. Blackstone prefers to call them written and unwritten law. Thus the Acts enacted by Parliament are statutory laws as they proceed from legislation whereas the customs which have assumed the shape of law are called common law in England. The common law is therefore, customary law and unwritten in its nature.

According to Austin, legislation includes activities which result into law-making or amending, transforming or inserting new provisions in the existing law. Thus there can be no law without a legislative Act.[2] Austin further holds that when a Judge establishes a new principle by means of his judicial decision, he is said to exercise legislative power and not judicial power.

James Carter, a staunch supporter of the historical school of jurisprudence, however, thinks that legislation is the least creative of the sources of law as it is not possible to make law by legislative action alone. At the most it may threaten a punishment as a consequence of a particular conduct and thus furnish additional motive to influence conduct. It can be effectual law when it is reinforced by custom.[3]

Salmond observed that legislation is that source of law which consists in the declaration of legal rules by a competent authority.[4] According to him, the term 'legislation' as a source of law is used in three different senses. In its strict sense, it is that source from where the rules of law declared by competent authority are framed. In its widest sense, legislation includes all methods of law-making. In this sense, legislation may either be (i) direct, or (ii) indirect. The law declared by legislature is called direct legislation whereas all other actions through which law is made are species of indirect legislation. In this third sense, legislation includes every expression of the will of the legislature whether making law or not.

Supreme and Subordinate Legislation

Legislation may either be supreme or subordinate. Legislation is supreme when it proceeds from the sovereign power in the State and is incapable of being repealed, annulled or controlled by any other legislative authority. On the other hand, subordinate legislation proceeds from any authority other than the sovereign power. It is dependent for its continued existence and validity on some supreme authority. Thus in England the doctrine of parliamentary sovereignty implies supremacy and omnipotence of the British

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Jurisprudence, Vol. III, p. 555.

Parliament. Therefore, it possesses the power of supreme legislation. In India, however, the Parliament is sovereign but not supreme although it possesses the power of supreme legislation.[5] Legislation by bodies inferior to the sovereign constitutes subordinate legislation.

Validity of Subordinate Legislation

In order that the exercise of delegated legislative power may be valid, certain conditions must be satisfied. These conditions are :—

(*i*) The parent Act, *i.e.*, the Act under which the power to make subordinate legislation is exercised, must be valid.

(*ii*) The delegation clause in the parent Act must be valid.

(*iii*) The statutory instrument so made, must be in confirmity with the delegation clause in point of (a) substance,[6] (b) procedure, and (c) form.

(*iv*) The statutory instrument must not violate certain general norms laid down by judicial decisions, *e.g.*, norms regarding ouster of court jurisdiction, imposing a penalty or tax, giving retrospective effect *etc.*

(*v*) The statutory instrument must not violate any of the fundamental rights[7] guaranteed by the Constitution or any other provision[8] of the Constitution.

Kinds of Subordinate Legislation

The chief forms of subordinate legislation are as follows :—

1. Colonial Legislation.—The British colonies and other dependencies were conferred limited power of self-government in varying degrees by the Imperial legislature. The colonies in exercise of this power, enjoyed limited power of law-making. But the laws so made by colonial governments could be repealed, altered or superseded by the Imperial legislature, namely, the British Parliament. However, after the passing of the *Statute of Westminster* of 1931, the self-governing Dominions under the Crown have been given power to make law independently subject to nominal supremacy of the British Crown.

2. Executive Legislation.—The legislature, *i.e.*, the Parliament quite often delegates its rule-making power to certain departments of the executive organ of Government. The rules made in pursuance of this delegated power have the force of law. They may, however, be repealed or superseded by the legislature as and when deemed necessary to do so. Keeton suggests that this species of subordinate legislation has given rise to a vast body of rules known as *administrative law* which is commonly called 'public law' because it describes

the nature of the activity of the executive department of the government in action.[9] In France, it is known as *droit administratif*. Sir Ivor Jennings has defined administrative law as "the law relating to administration which determines the organisation, powers and duties of administrative authorities in the State".

Executive legislation in India includes power to make rules, regulations and bye-laws for administrative matters such as fixing of price,[10] or deciding suitable place for market,[11] taxation,[12] setting up incorporated bodies[13] *etc.*

3. Judicial Legislation.—In certain cases, legislative power of rule-making is delegated to the judiciary and the superior courts are authorised to make rules for regulation of their own procedure in exercise of this power. This is also known as judicial legislation which should not be confused with judicial precedents where the Court formulates a new principle of law through its judicial decision.

The Constitution of India has conferred the power of rule-making to the Supreme Court under Article 145. Similar power is conferred on the High Courts under Article 227 of the Constitution. The Supreme Court and the High Court may frame rules and regulations for the conduct of its business and exercising its supervisory power over the subordinate courts. Article 145 empowers the Supreme Court to make rules relating to the following matters :—

(1) for setting up norms for practising lawyers;
(2) for the procedure of appeals and time-limit for such appeals;
(3) for proceedings relating to enforcement of fundamental rights;
(4) for transfer of cases to different High Courts;
(5) for disposal of criminal appeals coming from High Courts;
(6) for laying down conditions for review petitions;
(7) for making rules relating to costs and fees *etc.*;
(8) for making rules for grant of bail, bonds, security *etc.*;.
(9) for making rules relating to stay of proceedings;
(10) for laying down the procedure for the removal of the Chairman or a member of the Public Service Commission on charges of misconduct.

The rules framed by the Supreme Court under Article 145 are subject to two limitations, namely, : (1) They should be under the law enacted by the Parliament, and (2) the approval of the President is necessary for such rules.

4. Municipal Legislation.—The municipal authorities are allowed within their areas to make bye-laws for limited purposes such as water-tax, land urban cess, property-tax, town planning, public health, sanitation *etc.*

5. Autonomous Legislation.—The State may occasionally allow private entities or bodies, such as universities, companies, corporation etc. to make bye-laws for regulating the conduct of their business. These bye-laws are framed in exercise of the rule-making power conferred on these bodies by the State.

Delegated Legislation

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