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## **Interpreting taxing Statutes # 14-I – Delegated legislation**

**Delegated legislation is law made by a person or body under legislative powers conferred by Act.**

Delegated (or subordinate) legislation is law made by a person or body (the delegate) under legislative powers conferred by Act (the enabling Act). A valid provision of delegated legislation has the same effect as if it were contained in an Act.

In the case of most delegated legislation, the delegate is a minister of the President. There is no restriction, however, on the type of person or body to whom Parliament may delegate legislative power. The delegate need not be one established by Act. Nor need the delegate be in the public domain, though this is usually the case.

**Delegated legislation is distinguished from conditional legislation for there is absence of delegation of legislative power.**

Delegated legislation is distinguished from conditional legislation for there is absence of delegation of legislative power. In the conditional legislation discretion is given to an outside authority to take certain steps in relation thereto; the law is complete in all its aspects. Thus, it has been held that a provision that certain parts of an Act shall come into operation only on the petition of a majority of electors does not confer on the electors the power to legislate.

Similarly, a provision in a law stating that rules or orders made by the executive thereunder shall have the effect of overriding other laws is not necessarily a delegation of legislative power.

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Such a provision has merely the effect of by-passing a law and, having been made by the legislature itself, it does not suffer from any such defect. In such cases it is assumed that the delegation is non-legislative in character; the policy of the law is settled; the law is also complete in all respects; only a power to fill in minor details as respects its operation is involved in such cases.

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The most common forms of delegated legislation are rules and orders, but there is no restriction on the name that an enabling Act may use to describe the delegated legislation to be made under it. So, apart from rules and orders, there are by-law, regulation, instruction, clarification, guideline, scheme, and direction. A delegate legislation once notified in official gazette is termed as notification. A delegated legislation not notified but circulated amongst the people working in a department is termed as circulars.

Rules may be defined as minor laws.

Rules may be defined as minor laws. They have traditionally been used to flesh out the details of an Act. The executive are authorised to frame rules for carrying into effect the objects and purposes of the Act. Rules usually have a continuous effect, and so like Acts, are ‘always speaking’. In Gazette of India it is published as G.S.R. (General Statutory Rules) in Part II Sec 3(i). Invariably the Act also sets out for the guidance of the executive the topics on which such rules may be made, although the lists of topics so set out are not intended to be and may not be exhaustive.

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**The term ‘order’ has traditionally been used for an instrument that makes a one-off change to the law.**

The term ‘order’ has traditionally been used for an instrument that makes a one-off change to the law. An order generally is specific and limited in its application, though instances of orders having wider application standing more or less on the same footing as enactments are also not uncommon, eg orders made under the Defence of India Act, 1971, the Essential Commodities Act 1965, the Adaptation Orders under the Indian Independence Act, 1947, etc. In Gazette of India it is published as S.O. (Statutory Orders) in Part II Sec 3(ii).

**Byelaws are mainly used for delegated legislation made by local authorities, public utilities, and similar bodies.**

The term ‘by-law’ (plural byelaws) is mainly used for delegated legislation made by local authorities, public utilities, and similar bodies (whether public or private), for example, building byelaws made by municipal corporation, byelaws of a company such as Article of Association. If validly made, it has the force of law within the sphere of its legitimate operation. Byelaws usually operate in a small geographical area, or apply only to the operations of a particular body.

**Regulations, other than Presidential one, are somewhat inferior to rules in that they are generally made by a subordinate authority like a Board or other statutory Body functioning under a statute.**

Regulation as defined in GC Sec 3(50) means a Regulation made by the President under COI Art 240 for regulating the affairs of union territories which do not have legislature. But this term is also sometimes being used as a rule made by statutory bodies for

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under GC Sec 3(51) a rule is defined to include a Regulation made as a rule under any enactment such as: SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 made by Stock Exchange Board of India or Cost Accountants Regulations 1959 made by the Institute of Cost Accountants of India.

Regulations, other than Presidential one, are somewhat inferior to rules in that they are generally made by a subordinate authority like a Board or other statutory Body functioning under a statute. The Indian practice is to confer rulemaking powers on the Government itself and where a specified subordinate authority is singled out for regulating any matter, the subsidiary legislation is generally in the form of regulations. Such regulations may be needed only for binding the members of that authority or they may have a wider significance. Rules, on the other hand, have invariably a much wider application.

Notifications have the force of law which are passed by a body having authority to promulgate them and which lays down some rules of conduct for persons in the community to obey.

Statutory instruments are notified so that the 'public may know them but all of them do not have the force of law, for example, appointment, posting, and transfer of officers which are often notified in the Gazette cannot obviously have the force of law. Only such notifications have the force of law which are passed by a body having authority to promulgate them and which lays down some rules of conduct for persons in the community to obey. A notification of legislative nature is required to be laid before the Parliament. A notification is presumed to be in known in the public domain and therefore binding on the public.

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**A circular is presumed to be known to the departmental personnel and therefore is binding to them only and not to the public.**

A circular is presumed to be known to the departmental personnel and therefore is binding to them only and not to the public. A circular is of clarificatory nature not of legislative nature, hence is not laid before the Parliament.

**Scheme may embody subordinate legislation containing a body of binding rules.**

A "Scheme" may be of two kinds. It may embody 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, they will be enforceable in courts of law or by other authorities and will have the force of law. The other kind of scheme may be purely executive in character and does not contain any rules of conduct for any body to follow.

**A proclamation is the act of proclaiming, a declaration by public outcry / notice given by a State or departmental official of some act done by the Government or to be done by the people.**

A "proclamation" is the act of proclaiming, a declaration or notice by public outcry such as is given by criers or a public notice in writing given by a State or departmental official of some act done by the Government or to be done by the people. It is in the above sense that the word is used in section 26 of the Police Act of 1861 which provides for the disposal of unclaimed property by the police after issuing a proclamation.

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On the other hand, legislation in pursuance of some statutory power may also take the form of proclamations. For instance, in case of failure of the constitutional machinery in any State, the President may, by Proclamation, assume to himself the powers of the State legislature and also make such incidental or consequential provisions as may be necessary or desirable to give effect to the objects of the Proclamation.<sup>1</sup> The President may also declare by Proclamation a state of emergency which has the force of law. <sup>2</sup>

**A resolution is decision of a body and may take the form of delegated legislation.**

A "resolution" passed by Parliament is the form in which that body expresses an opinion. It is generally a suggestion or declaration concurred in by both Houses where there are two Houses or passed by one House if there be but one and not submitted to the executive for approval. A resolution passed by Parliament under article 249 or by the Legislature of a State under article 252 is not equivalent to a statute. It is only a declaration and enables some further action, including legislative action, to be taken.

The Legislature often requires the executive to take action by means of resolutions, for implementing such resolutions it may sometimes be necessary to enact legislation, eg The Commissions of Inquiry Act 1952, The Indian Rubber Control Act 1934.

**Delegated legislation is to be construed in the same way as an act.**

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<sup>1</sup> COI Article 356

<sup>2</sup> COI Article 352

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Subject to the following point, the delegated legislation is to be construed in the same way as an Act:

I) The intention of the legislature, as indicate in the enabling Act, is the prime guide to the meaning of delegated legislation.

II) Unless the contrary intention appears, expression used in delegated legislation have the same meaning as in the enabling Act.