

LL.M IIInd Sem
Jurisprudence II (L- 2002)
Legislation

Introduction

The Legislation word has been derived from two Latin words legis and Latin [latum]. Legis means 'law' and latum means 'to make'. Legislation means 'the making of Law' in general sense, Legislation can be defined as 'the promulgation of legal rules by an authority which is competent to do so.' In the strict sense of the, Legislation means the statutory law passed by the legislature [parliament or state]

Definition

Bentham: -Legislation implies both the process of law making, as well the law evolved as a result of such process

Austin: - Legislation includes those activities which result in the making of a new law, or amendment, transformation or addition of new provisions in the existing law '

Gray: - Legislation means the formal utterances of the legislative organ of the government.

Classification of Legislation: -

1)Supreme Legislation: -Legislation is supreme when it emanates from the supreme Legislation authority in the state. there is no other authority in the state that can control it. Such Legislation cannot be repealed, amended, modified or controlled by any authority other than the supreme legislative authority.

2)Subordinate Legislation :- Subordinate Legislation ,as opposed to supreme Legislation ,is that which comes from any authority other than the sovereign power .Legislation is subordinate when it emanates from any authority other than the supreme Legislation authority in the state .It is made under the power delegated by the supreme legislative authority .Its existence, validity and continuity depend upon the supreme legislative authority

Kinds of Subordinate Legislation

1) Colonial Legislation:-It means implies the law made by an imperial country for its colony .The british colonies enjoyed very limited law making power .The laws made by the colonies were subject to scrutiny by the British parliament .however ,in the modern era ,almost all countries are independent and enjoy the power to make laws for themselves .

2) Autonomous Legislation :-The supreme authority can confer power on a group of people to legislate on the matter which are of concern to them as a group .The law made by that group in the exercise of such power is called autonomous Legislation .the group as such is known as an autonomous body .for example the state can empower universities ,companies ,corporations,etc.

3) Judicial Legislation :-Power are conferred upon the superior courts to make rules for the regulation ,of their own procedure e in India ,both the supreme court and the high courts have been entrusted to make rules for regulating the practice and procedure of the courts .the supreme court and high court regulate their own procedure under articles 145 and 227.

4) Executive Legislation :-The supreme authority can allow the executive authorities to frame certain rules and by laws and the power to issue certain notifications .the rules ,by laws ,notifications, etc ,issued or made by the executive in pursuance of this power conferred by the supreme authority are known as executive Legislation. They also have the force of law.

5) Municipal Legislation :-The supreme authority can allow municipal bodies to frame rules and make by laws for areas falling within their jurisdiction for some purposes like property tax ,town planning ,public health, Sanitation etc .The law made by the municipal bodies in the exercise of such power is called municipal Legislation .there are various municipal bodies working in India for example: municipal corporation, municipal council , panchayats ,block samiti ,etc.

Delegated Legislation

Delegated Legislation can be defined as the enactment of law by any authority other than the supreme legislature .it denotes the rules ,regulation ,orders ,notifications, by laws or directions made by the subordinate authorities under the power delegated to them by the supreme legislature authority, like the legislature [parliament or state] .in other word ,when the function of Legislation is entrusted to some other organs ,the law made by such organs is called delegated Legislation .

Necessity of Delegated Legislation

1. Lack of time
2. Lack of technical knowledge
3. Emergency
4. Flexibility
5. Local matters
6. Experience
7. Experimentation

Deficiencies of Delegated Legislation

1. Excessive delegation
2. Less time for scrutiny
3. No Responsibility

Delegated Legislation in India: -The Indian constitution has established a welfare state. Which mandates that state shall legislate on innumerable activities touching human lives in order to promote “the maximum happiness of the maximum number of people”.

Sub Delegation: -When the parliament gives the power to a subordinate authority to supplement the law by rules, such power can be exercised by that subordinate body only. When that subordinate authority further delegates its power to some other authority, it is known as sub delegation

Control over Delegated Legislation: -

1. Procedural Control: - There are some procedural controls which are imperative in order to keep a consistent check over the exercise of power by the subordinate authorities. these controls are necessary in order to prevent them from misusing their power

2. Parliamentary Control: - Parliamentary control over delegated Legislation becomes necessary in order to enable the members of parliament to scrutinize, discuss and alter the rules enacted by the subordinate authorities. The parliament is the ultimate watchdog over the subordinate Legislation and executive authorities. It keeps a check on the misuse of power by the subordinate authorities.

3. Judicial Control: - The supreme court of India and all high court are also empowered to be exercise control over delegated Legislation. Delegated Legislation may be assailed on any one of the following three grounds: -

Firstly, that it is ultra-vires the enabling act.

Secondly that it is ultra-vires constitution.

Thirdly That it is not made in accordance with the procedure prescribed by the enabling act.

The first two are the instances of substantive ultra-vires. Where as the third is an instance of procedural ultra-vires.

For further clarification you may reach us via

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