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UNDERSTANDING SUBORDINATE LEGISLATION WITH REFERENCE TO SECTION 23 OF THE INDIAN CONTRACT ACT, 1872

Introduction

1. Legislation, usually referred to as statutory law, forms the very basis of India's current legal order. The statutes passed and enforced by the legislature serve as the foundation for statutory legislation. Law is a formal, written act of the legislature. It states the legislative intentions which are in effect, mostly enforced through subordinate legislation by the Executive.
2. There are various kinds of legislation: Supreme Legislation, Subordinate Legislation, Colonial Legislation, Executive Legislation, Judicial Legislation, etc. This article deals with Subordinate Legislation.
3. The act of creating legislative instruments by a body subordinate to the Legislature and acting within the authority granted by the Legislature, within certain parameters, is referred to as "**Subordinate Legislation**." The phrase also refers to and encompasses the actual statutory documents.
4. Pertinently, Black Law's Dictionary defines Subordinate Legislation as:
"Legislation that gets from any authority other than the Sovereign Power in a state and that depends for its proceeds with presence and legitimacy on some predominant or supreme authority."
5. Subordinate Legislation has a direct impact on the modern-day commercial dealings of society at large. The Indian Contract Act, 1872 (for short "**Contract Act**") under section 23 embodies within itself the principles of lawful consideration or object of an agreement entered between the parties which should not be forbidden by Law.
6. After decades of uncertainty existing around subordinate legislation in its applicability to Section 23 of the Contract Act, the Hon'ble Supreme Court in **G.T. Girish v. Y. Subba Raju** (2022 SCC Online SC 60) conclusively held that, in accordance with section 23 of the Contract Act, subordinate legislation in the form of statutory rules qualifies as "Law" and any contract which is forbidden by Subordinate legislation shall be

void.

Status of Rules/ Regulations Framed under an Act

1. Many Acts which were passed by the Parliament had delegated their powers to make rules and regulations to the executive e.g., RBI, TRAI, etc., since the reason behind delegation of such powers by the parliament is the requirement of amendment of such rules on a frequent basis and to avoid time and expense required to amend the Act in parliament itself, apart from providing flexibility in the enforcement of the objects of the Act itself.
2. In the case of **Chandra Bhan and Ors. v. State of U.P** [(2005) 51 ACC 508] it was held by the Hon'ble Supreme Court that the rules framed by subordinate legislation should not suffer from any unreasonableness and subordinate legislation is required to be careful while framing rules, which should not violate the parent act.
3. The power to examine the subordinate legislation has been given to the Supreme Court and High Court. In the case of **Lachmi Narayan v. Union of India** (AIR 1976 Sc 714), the central government under section 2 of the Union Territories Act, 1950 extended the Bengal Finances Act, 1941 to the state of Delhi through a notification, granting an exemption on sales through various notifications, however only to subsequently, withdrew the exemption by another notification, which was challenged. The Hon'ble Apex Court after examining the ratio and powers as envisaged under the Act, struck down the notification being the exercise of powers granted to the Executive for subordinate legislation being beyond the Act itself, thereby establishing that subordinate legislation has to be within the four corners of the parent act itself.

Statutory Interpretation of Rules/ Regulations



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1. Statutory Rules are regulations created using the authority granted to subordinate legislation by a statute. If properly passed, it shall take effect, and the validity of the contract with regard to the rules shall be determined in accordance with section 23 of the Contract Act.
2. When interpreting statutory rules, it is important to consider whether the rules are in fact valid or substantial, including if it is consistent with the enabling Act and within the bounds of the authority that authorized it. However, unless the rules/regulations are struck off or withdrawn, the same though not in consonance with the Parent Act, will be “law” for the purposes of Section 23 of the Contract Act.

Section 23 viz-a-viz Subordinate Legislation

1. Section 23 envisages lawful considerations and objects. The word ‘object’ is interpreted to mean ‘purpose’, which is legal and under Law shall be considered lawful and valid otherwise in cases of contract where an object is forbidden by law, then the contract shall fail to see the light of the day and shall be considered as void.
2. Section 23 of the Contract Act governs the contractual obligations as to the status of the rules framed under an Act, since the rule is considered as a law under section 23 of the contract act.
3. In the case of **Gherulal Parakh v. Mahadeodas** (AIR 1959 SC 781), it was held that the words ‘forbidden by law’ occurring in section 23 of the Contract Act doesn’t result in completely voiding out any object or consideration, in other words, since “void” and “forbidden by law” is not the same thing, something that is void need not also be “forbidden by law.”
4. Section 23 implies that a contract or agreement is void if its goal is unlawful, if doing so would violate the law, or if carrying it out would require breaking another rule.
5. In the case of **Union of India v. Colonel L.S.N. Murthy and Another** {(2012) 1 SCC 718,)} it was held that “the word law” in the expression “defeat the provisions of any law” in section 23 of the Contract Act is limited to the expressed terms of an Act of the legislature.
6. In the case of **G.T. Girish v. Y. Subba Raju** (2022 SCC Online SC 60), it was observed that Contract Act's Section 23 is intended to protect all forms of law from encroachment and infringement by a contract's enforcement. A statutory rule would be considered law under section 23 of the Indian Contract Act as well as under Article 13 of the Indian Constitution.

Conclusion

1. To recapitulate, Subordinate legislation is the backbone of the legislation, it is the body that makes regulations through the power delegated to them by the legislature and the regulations are made within certain parameters.
2. As has been rightly held by the Judiciary, the Rules are to come within the scope of “Law” as envisaged under Section 23 of the Contract Act. This not only avoids any anomaly in the contractual relationship between the parties but also goes a long way in guiding the contractual obligation being under the over sight of the Law.
3. It shall not be out of place to state that the “law” under Section 23 of the Contract Act engulfs within itself a very wide scope, which no doubt includes subordinate legislation.
4. The inclusion of subordinate legislation under Section 23 of Contract act, no doubts, burdens the Hon’ble Courts to carefully evaluate, examine and consider the contract executed between the parties, specifically with regard to consideration, object, and applicability in order to come to a conclusion as to whether the same are within the ambit of Section 23 or not.
5. To conclude, the intention of the drafters of the Contract Act were also to include the subordinate legislation within Section 23, such that no lawful agreement can be entered from acts forbidden by Law, which in itself includes the subordinate legislation.