
THE DOCTRINE OF LEGISLATIVE LAYING: ANALYZING THE PROCEDURAL VALIDITY AND CONSTITUTIONAL ACCOUNTABILITY OF DELEGATED LEGISLATION

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ABSTRACT

This Article seek to unravel the legal debate surrounding the consequences of non-compliance with statutory laying requirements in delegated legislation in five (5) parts: **Part I** provides a brief Introduction to delegated legislation and its purpose in the overall constitutional scheme; **Part II** gives a taxonomy of the laying procedures as established by scholars and judicial precedents; **Part III** delves into the judicial perspectives on the nature of the laying clauses as well as the standard of review established by Courts in India; **Part IV** highlights the issues surrounding the temporal mandate and the consequence of efflux of time; and finally **Part V** summarizes the conclusions.

1. Introduction

Parliament and the State Legislatures are entrusted with the power to enact legislation under Articles 245 and 246 of the Constitution. Parliament and the State Legislatures possess the plenary power to enact legislation, with prospective and retrospective effect, subject to due observance of constitutional requirements. In the contemporary legal landscape, the complexity of governance has necessitated a shift toward delegated legislation.

As the Parliament and the State Legislatures lack the time and technical expertise to address every minute detail concerning administration, the power to frame rules, regulations, notifications, etc are frequently devolved to the executive branch. This practice, while functionally indispensable, poses a perennial challenge to the principle of legislative supremacy.

Central to our constitutional fabric is the principle of Separation of Powers which has been held to constitute the basis structure of the Constitution. The principle of Separation of Powers

includes within its folds the principle of legislative oversight, which ensures that the executive remains accountable to the elected representatives of the people.

An oft-used mechanism for this oversight is the introduction of a statutory requirement of the executive to place the delegated instruments like rules, regulations, notifications, before the legislature for scrutiny. This mechanism, colloquially referred to as 'laying clause' or 'laying', was introduced to reconcile the interests of administrative flexibility with democratic accountability.

The presence of a 'laying clause' in a statute serves as a constitutional sentinel. It ensures that the delegate remains tethered to the mandate of the delegator. However, the legal efficacy of such clauses often turns on whether they are construed as mandatory or merely directory. The significance of judicial scrutiny over these laying provisions is far from academic as it determines whether a failure to comply with procedural formalities renders an executive action void ab initio or merely constitutes a procedural irregularity.

This article explores the taxonomy of laying provisions, the judicial criteria for determining the character of these requirements, and the legal consequences of chronic procedural non-compliance relating to inordinate delays in placing notifications before the legislature.

2. The Taxonomy of Laying Procedures

The legislative control over delegative instruments through laying procedures is not monolithic. The taxonomy generally accepted in Indian law draws heavily from the categories elucidated in *Craies on Statute Law*¹ which identifies three distinct categories of laying that are generally employed by legislatures to control delegated legislation. These categories also delineate the intensity of the legislative check.

- a. *Laying without further procedure* (a.k.a. 'Simple Laying') exists where the statute merely requires the executive to inform the House of its actions. In these instances, the instrument usually comes into operation upon publication in the Gazette, and the act of laying is considered a procedural formality for the purpose of transparency rather than active control.

¹ See: S. G. G. Edgar, *Craies on Statute Law* (7th ed., Universal Law Publishing Co. Ltd.), pgs. 305–07. Interestingly, as per *Craies*, the requirement of laying first appeared in 1830s.

- b. *Laying Subject to Negative Resolution* incorporates a more active form of control. The instrument is placed before the legislature, which retains the right to modify or annul the instrument within a specified timeframe.
- c. *Laying Subject to Affirmative Resolution*, is the most stringent form of control, requiring a positive resolution of the House before the instrument acquires legal force or is permitted to continue in operation.

As established in *Hukam Chand v. Union of India*, (1972) 2 SCC 601, the determination of which category a provision falls into depends heavily on the specific language used in the parent statute. The Court noted that the legislative intent must be gathered from the specific words used in the laying provision. This classification is the prerequisite for determining whether a procedural default is fatal to the validity of the executive action.

3. Judicial interpretation of the nature of the laying clauses and standard of review

A central question in Indian law is whether the failure to place an instrument before the legislature renders that instrument void. The answer is often found in the distinction between directory and mandatory provisions.

Where a statute provides for simple laying for information, the courts have generally held such provisions to be directory. In *D.K. Krishnan v. Secretary, Regional Transport Authority*, AIR 1956 AP 129, a Division Bench of the High Court examined Rule 134-A regarding motor vehicles. The petitioner contended that the rule was invalid because it had not been laid for the requisite 14 days before the Legislature as mandated by the parent Act. The Court observed that since the law allowed the rules to come into force immediately upon publication, and since no affirmative resolution was required, the laying provision was only directory. The Court held that unless the statute makes laying a condition precedent to the validity of the rule, mere non-compliance does not result in the rule being struck down.

A similar conclusion was reached by a three-judge bench of the Supreme Court in *Atlas Cycle Industries Ltd. v. State of Haryana*, (1979) 2 SCC 196. The Court scrutinized Section 3(6) of the Essential Commodities Act, 1956, and concluded that because the Act did not provide for an affirmative resolution or any penalty for non-observance, the laying requirement was directory. The Court reasoned that the legislature's intent was to keep the House informed, not

to make the validity of the order contingent upon the laying.

When the laying clause includes a power for the legislature to modify or annul the instrument—the negative resolution procedure—the accountability metric shifts. In *D.S. Garewal v. State of Punjab*, 1959 (1) SCR 792, a Constitutional Bench of the Apex Court highlighted that the constitutional validity of a delegated power depends on the existence of legislative control. By requiring rules under the All India Services Act to be laid for 14 days and the subsequent power of modification, the Parliament ensures it is keeping 'strict vigil and control' over its delegate. If the delegate denies the House the opportunity to exercise this control by failing to lay the notification, it undermines the very mechanism that makes the delegation of power constitutional.

Similarly, in *Mathura Prasad v. I.G. Railway Protection Force*, 1974 MPLJ 373, the High Court dealt with a situation where the laying clause required a negative procedure. The Court held that while the rules might remain operative until they are modified, laying clauses requiring a negative procedure should be viewed as a directory.

4. Issues surrounding the temporal mandate and consequence of efflux of time

Several statutes use the phrase 'as soon as possible' to describe the timeline for laying. However, the Executive's omission to place such delegated instruments before the House with reasonable dispatch is becoming a recurring occurrence, requiring judicial intervention. In this regard, a critical question arises: can a notification, validly issued at its inception, become invalid due to subsequent procedural non-compliance?

The Authors' submit that when a delegated instrument is withheld from the Legislature for years without any real emergency or justification, it renders the oversight provision of the parent Act nugatory. In such a situation, the 'directory' interpretation by the Courts can no longer shield the executive, as it effectively prevents the elected representatives from reviewing the executive's exercise of power.

The phrase 'as soon as possible' cannot be an open-ended invitation for delay by the executive, but prescribes a requirement of reasonable dispatch. It is submitted that the failure to lay an instrument 'as soon as possible' transforms by 'efflux of time' the procedural lapse into an arbitrary exercise of power. By allowing the notification to exist in a legislative vacuum, the

executive continues to defeat the object and purpose of the parent Act's oversight mechanism.

Support for this proposition can be found from the decision of *Jan Mohammed v. State of Gujarat*, (1966) 1 SCR 505, where a Constitution Bench of the Supreme Court considered a situation where rules were placed before the House after a delay of several years. The Court noted the specific circumstances i.e. the legislature was not in session due to World War II, and did not strike them down as the rules were placed at the 'first available opportunity' in 1946. The Authors argue that the ratio of *Jan Mohammed* can be used to suggest that the validity of a notification is tied to the executive's diligence.

Similarly, in *D.S. Garewal v. State of Punjab & anr.*, 1959 (1) SCR 792 the Court rejected the Petitioner's challenge of excess delegation on the ground that Parliament took care to see that the rules were laid on the table of Parliament for 14 days before they were to come into force and were subject to modification as may be made when they are so laid. From the language of the Act, the Court held that it was clear that Parliament in no way abdicated its authority, but was keeping strict vigil and control over its delegate.

If there is inordinate delay in laying or a complete failure of laying of instruments before the House, it would be axiomatic for the Courts to uphold such a challenge on the ground of excessive delegations as the legislature loses its control over the executive and abdicates its authority.

In *I.T.C. Bhadrachalam Paperboards v. Mandal Revenue Officer*, (1996) 6 SCC 634, the word 'shall' in a laying provision was held to be directory in terms of validity. The mandatory duty of accountability was also imposed on the constitutional functionaries. Unreasonable delays renders the oversight provision of the statute nugatory, meaningless, and redundant. It effectively creates a 'dead letter' of the law, defeating the very purpose for which the legislature enacted the oversight mechanism. When the executive circumvents this by neglecting to lay a notification for nearly two decades, it commits a serious breach of the statutory framework, leading to a breakdown of the procedural nexus between the delegate and the legislature.

The 7 judge Constitution Bench decision in *Krishna Kumar Singh v. State of Bihar*, (2017) 3 SCC 1, held that it was "well settled that a requirement of merely laying subordinate legislation before the House of the legislature is directory. But where a disapproval of subordinate legislation is contemplated, such a requirement is mandatory." Albeit in the context of the

executive's constant failure to lay repromulgated ordinances before the state legislature, the Court held that on the executives failure to comply with its unconditional obligation to lay the ordinance before the legislature, will strip the ordinance of its presumption of legality and it cannot have the same force and effect as law enacted and will have no legal consequence whatsoever. The Court re-affirmed the constitution bench decision of *D.C. Wadhwa v. State of Bihar*, (1987) 1 SCC 378 and held the executive's failure to be a colourable exercise of power as well as a fraud on the Constitution.

5. Conclusion

The Supreme Court in *Union of India v. G.S. Chatha Rice Mills*, (2021) 2 SCC 209 held that the subordinate legislation has to be made in accordance with the procedure prescribed under the statute or not at all. The requirement of legislative laying is not a mere bureaucratic hurdle but a vital constitutional safeguard. While the judiciary has been lenient toward short-term procedural defaults in 'simple laying' cases, this leniency does not extend to the deliberate or negligent circumvention of the House's powers over an extended period. Where a statute provides for a negative resolution procedure and a mandate of reasonable speed, the executive is bound by it. Ultimately, in a system based on the Rule of Law, the non-observance of the laying procedure by the executive transforms a valid executive act into an arbitrary exercise of power that bypasses the democratic checks essential to the Rule of Law.