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Is the Finance Act notified?

APRIL 05, 2023

Vijay Kumar

Finance Act, 2023 notified by the Government of India

Central Govt Notifies Finance Act, 2023

Finance Act 2023-2024 has been notified
Government of India notified the Finance Act, 2023

Finance Act, 2023 Notified after President Assent

THESE are headlines from various publications last week. Does the government notify the Finance Act? Maybe a little perturbed by these news headlines, a very erudite and famous lawyer called me up and asked agitatedly, "How can we say, 'Government of India notified the Finance Act, 2023'? Isn't the heading confusing?"

All that the government did was publish in the [gazette of India](#) that the Finance Act 2023 has received the assent of the President on the 31st March, 2023 and is *hereby published for general information*.

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
 Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
 (Legislative Department)
 New Delhi, the 31st March, 2023 / Chaitra 10, 1945 (Saka)

The following Act of Parliament received the assent of the President on the 31st March, 2023 and is hereby published for general information:—

THE FINANCE ACT, 2023
 No. 8 OF 2023

This has been taken by many as a notification issued by the government, whereas the Ministry of Law and Justice does not call it a notification - rather it doesn't call it anything; it just says that the Finance Act is published for general information. The publication states that the Finance Act has received the

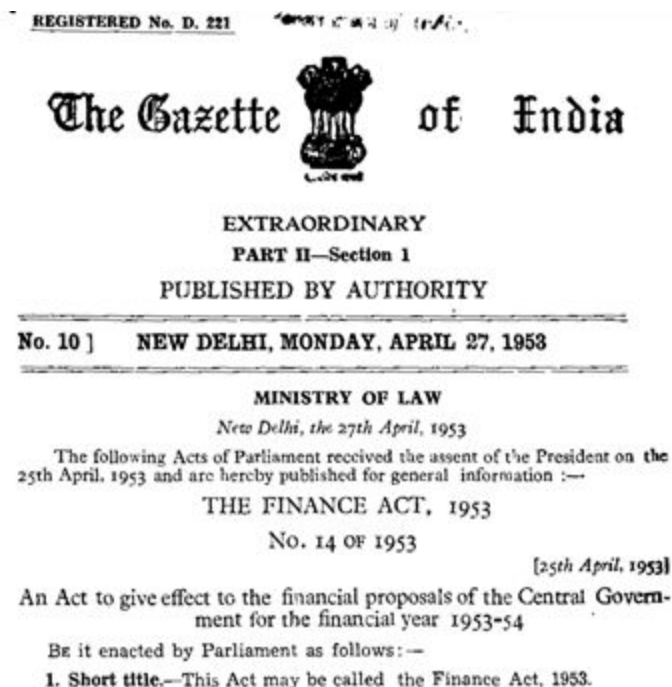
assent of the President, but doesn't it become the 'Act' only after receiving the President's assent? What has received the assent of the president - the Bill or the Act?

M.N. Kaul and S.L. Shakhder in their "*Practice and Procedure of Parliament*" state

All legislative proposals have to be brought in the form of Bills before Parliament. A Bill is a statute in draft, and no Bill, whether it be introduced by the Government or a private member, can become law until it receives the approval of both the Houses of Parliament and assent of the President.

So, what has received the assent of the President is the 'Finance Bill' and not the 'Finance Act'. The Finance Bill on receiving the assent of the President becomes the Finance Act. Thus, the government may be wrong in publishing in the gazette that the "*The following Act of Parliament received the assent of the President*". Maybe they should publish that, "*the following Bill of Parliament received the assent of the President and has become Act and is hereby published for general information*". Like water blushing into wine on seeing its master, the Bill will turn into Act on the assent of the President.

As for publication of the Finance Act, obviously after the Presidential assent, in the gazette for general information, is a practice followed for more than seventy years. The earliest gazette publication on the enactment of the Finance Bill that I could get was for [the year 1953](#).



So, all these years, on getting the President's assent, the Finance Act used to be published for general information in the Gazette of India and were never notified. To say that the Finance Act has been *notified* is perhaps a phraseological inexactitude and *notification* may not have the same meaning as assigned to it in some of our fiscal statutes like the GST Act. What is a *notification* ?

Section 2(80) of the CGST Act defines notification as:

"*Notification*" means a notification published in the Official Gazette and the expressions "*notify*" and "*notified*" shall be construed accordingly;

Very easy to understand! You don't know what a notification is? It's simple, "*Notification*" means notification, with an added condition that it should be published in the Official Gazette. And you have to construe *notify* and *notified* accordingly.

This kind of "*circular definitions*" lead us nowhere and our tax laws are full of them. During the discussion on the GST Act in the Parliamentary Committee, Mr. Mani Shankar Aiyer said, "*It says 'services' means anything other than goods. It means goods are anything other than services. This kind of a circular definition is not satisfactory*".

A circular definition occurs when the definition of a term or concept relies on the same term or concept being defined. This can result in a lack of clarity and ambiguity in the law, making it difficult for taxpayers to understand their obligations and for tax authorities to enforce compliance.

You must obey the law, because it's illegal to break the law.

Take another example: Section 2(29) of the CGST Act defines:

"competent authority" means such authority as may be notified by the Government;

See how much confusion this can create:

- *"competent authority"* means such authority. What is *"such authority"*? Is it another authority? Why can't it be **the** *"authority"* instead of *"such authority"*?
- *"competent authority"* means such authority as may be notified. What does this mean? An authority to be notified, not the one who is notified?
- *"competent authority"* means such authority as may be notified. "Notified, as defined above, would mean a notification published in the Official Gazette.

So, for someone to become a *"competent authority"*, the government has to look around for authorities and find a 'such authority' and then notify his appointment in the Official Gazette. Then and only then, he becomes the exalted *"competent authority"*

So, the publication of the Finance Act (on obtaining the assent of the President) in the official gazette may be construed as a notification. You know a notification is a notification published in the gazette. Thus, all the publishers who went with headlines that government has notified the Finance Act, may not be very wrong.

In fact, it is not the publishers alone who have realised that the Finance Act has been notified. In a [NOTICE OF INFORMATION](#), the Lok Sabha Secretariat stated, *"The Ministry of Law & Justice (Legislative Department) vide Notification No. 17 of 2018 have notified the Finance Act, 2018 wherein"*

What happens if 'Finance Bill' is described as 'Finance Act' in a book before the Bill had been passed by both houses of Parliament?

This happened in 1980.

On 4th August, 1980, when the Finance (No 2) Bill, 1980, as passed by the Lok Sabha, was about to be taken up for consideration in the Rajya Sabha, a member, raised a point of order and invited the attention of the House and the Government to the publication of a book *"fully incorporating all the amendments to the Finance (No. 2) Bill, 1980, as passed by the Lok Sabha."* According to the Member, this amounted to lowering the dignity of Parliament and committing a breach of privilege of the House.

On 25th August, 1980, the Chairman (Mr. M. Hidayatullah) after considering the matter in the light of the comments received from the authors, referred the matter to the Committee of Privileges for examination, investigation and report.

The Committee, after considering the oral evidence, presented to the House its report on 3rd December, 1980:

(i) The Committee noted that the Government of India in the Ministry of Finance (Department of Revenue) had issued a Press Note dated June 20, 1980 in which it was, inter alia, made clear to publishers that to describe, publish and sell the Finance Bill, 1980, as Act before it received the assent of the President infringed the provisions of the Copyright Act and the sale of any such publication would also amount to an offence of cheating under the provisions of the Indian Penal Code. The Press Note also stated that this undesirable practice was brought to the notice of the publishers concerned and they had given an undertaking to refrain from doing so in future.

(ii) During the oral evidence, the Committee drew the author's pointed attention to the Press Note issued by the Ministry of Finance and ascertained from him whether he was

aware of the issue and contents of the Press Note and whether he was also one of the publishers who had given an undertaking to Government not to indulge in the undesirable practice of prematurely and unauthorisedly publishing the Finance Act. To both these queries, he replied that the Press Note was within his knowledge and he as a publisher had given an undertaking to the Government not to publish the Bill as an Act in future.

(iii) The Committee held that the publication of the provisions of the Finance (No. 2) Bill, 1980, in the book when the said Bill was yet to be considered by the Rajya Sabha sought to create a misleading impression on the public mind that the aforesaid publication was the Finance (No. 2) Act, 1980, as finally passed by Parliament and assented to by the President when in fact it was not so.

(iv) The Committee was convinced that he has committed contempt of sufficient gravity so as to deserve the penalty of imprisonment. The Committee, therefore, recommended that he be committed to jail till the prorogation of the House without prejudice to any action to which he may be liable for violation of any other law of the land. In the opinion of the Committee such a penalty will not only be justified in the present case but also operate as a deterrent against erring persons and publishers in future.

However, finally, the Rajya Sabha took a lenient view and resolved that the authors be summoned to the Bar of the House and reprimanded during that Session of the Rajya Sabha on a day and time to be fixed by the Chairman.

On 24th December, 1980, they were brought to the Bar of the House and were reprimanded by the Chairman.

Full details of the issue can be had [here](#).

The Finance Bill becomes the Finance Act on the assent by the President and it needs no notification, but is published in the gazette for general information. That's all to it. Notifications are issued if it is provided for in the Act that any provision would come into effect from a date to be notified by the Government.

A law is a law only when it is made known to the public.

What's in a name? That which you call a 'notification', by any other name will still cause irritation and confusion.

Until Next week

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