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# A Study on Constructive Notices – Criticisms

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## ABSTRACT

*A Constructive Notice is a tool which is employed by various bodies in order to reach out to various sections of the people by officially notifying them of a particular action. There are sections in the newspaper which may read 'notification' or 'legal notice' or terminologies of the similar sort put out by the Legislative, Executive or the Judicial Bodies. Such notifications are said to be constructive notices and it is deemed that the person concerned is notified although it may not actually come to the knowledge of such person. This Essay deals with the Criticisms of such notices put forth by different bodies and also gives certain suggestions which the Supreme Court can manoeuvre.*

*Keyword – Constructive Notice, Actual Notice*

## I. INTRODUCTION

A *Constructive Notice*<sup>3</sup> in the legal sense is where the judgments, rulings, etc. of the Court are notified by way of public posting. In general sense, notifications based on the legislations made by different bodies which come under the definition of the State are considered to be constructive notices. Such notices are put forth when the stakeholders cannot be served an actual notice usually due to their population or reach. There is a presumption that every person ought to have knowledge of a fact. The word 'notice' is wider than the word 'knowledge' that is a person may not have actual knowledge of a fact but he may have notice of it. A common example we may encounter in our everyday lives is the sign board which is present in most hotels which reads "Management is not responsible for your belongings". The hotel management presumes the fact that it has been notified to any person who enters the hotel.

Right to information is a right given to people by virtue of the Right to Information Act, 2005<sup>4</sup>. In terms of seeking public comment on the legislative drafts, it's always been a very selective group which sends some analysis to the government to publish it in the official gazette. In the legal field, the entity or person is presumed to know about a legal action taken

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<sup>3</sup> Kailyn Champlin, Constructive Notice, Legal Dictionary (Jun 8, 2017), <https://legaldictionary.net/constructive-notice/>

<sup>4</sup> The Right to Information Act, 2005 (No. 2 of 2005)

or to be taken by the opposite entity or person. Under the Companies Act<sup>5</sup>, the persons dealing with a company is deemed to have sufficient knowledge of the company's articles and memorandum of associations.

## **II. SUBJECT MATTER**

The idea of Constructive Notice is accompanied with two premises. The first premise is that the citizens "should be aware". When the laws passed are not brought to the knowledge of the person how can they expect them to know of it. Also, ignorance of law is not an excuse and the person can still be penalised even though he may not be aware of it. This idea is like forcing something to people in a Democracy. The second premise is that the citizens "will be aware". When we assume that they will be aware, we are taking the people for granted. This concept is in contrast to the reality wherein the citizens will not actually be aware.

In our country, after the bill is passed, it gets published as a Gazette notification. The Gazette notification is in Hindi and English. In a country with so many peculiarities relating to language, can we expect that every person will know either Hindi or English. The Supreme Court must direct the legislature to make translations of the laws framed to different languages relating to the community. For example, if a law has been passed which directly affects the interest of the Bodo tribe in the North-Eastern State of Assam, the law framed must be translated in such language which can be understood by them. Also, Article 350 A in the Constitution of India<sup>6</sup> talks about the primary stage of children belonging to linguistic minorities where the instructions must be given in the mother tongue and it is the duty of the State to ensure the same. Similarly, when the Constructive notice is published, the Government must make sure that it is conveyed in the mother tongue keeping Article 350 A in mind.

In every law framed, there are a number of provisions and the text in the Gazette or the judgments is highly complicated in the view of a common man. Only in an ideal system can we expect that each and every provision will reach out to the stakeholder. We must aim to ensure that at least those provisions which have deeper impact in the lives of the stakeholders reach out to them. We must resort to the fourth pillar of Democracy i.e. the Media for the same. The media, by way of different channels and shows can bring out these Notices to the knowledge of the people. The latest method of notifying by way of caller tune adopted by the Ministry of Health and Family Welfare to spread the word about the Novel Coronavirus is

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<sup>5</sup> The Companies Act, 2013 (Act No. 18 of 2013)

<sup>6</sup> The Constitution of India, 1950

another technique which can be used to reach out to the public at large to bring the latest laws to their knowledge. Another method which can be used by the State is by way of short video clippings which educate people on the relevant laws

In a country like India, that is the second largest populous country in the world and where the illiteracy rate (74.04%) is at its peak which means more than two-thirds of the population has no access to education. In such a scenario, the people have difficulties to firstly, access the information and secondly in rationally understanding the provisions. The other 25% may at times wilfully or deliberately abstain from inquiries or search. In such circumstances, how can we conclude that the current system of Constructive notices is effective in ensuring the laws framed for the people are reaching out to them.

Democratic Participation is a positive concept which must exist in every Democratic Country. The people have a say in the direction and operation of the political systems in a country where there is an established system of Democratic Participation. When the citizens are not even aware of what laws even apply to them, how can they participate in the operation of the political systems.

In an instance, the Electricity Board of a particular State in our country invited objections for the increase in price of the electricity charges per unit. The objections were invited by way of notification in the local newspaper in its dialect. We may opine that, as the notification was put in the local newspaper, the residents of the State would have read the same and at least a hundred of them may have filed objections. It turns out that, from the whole State with a population of more than 6.41 Crores, there were just two objections filed. There will also arise an argument that, most of them will be fine with the hike. But, in reality, who is? The Statistics which can be seen in this instance shows us that the present system of Constructive notices is not reaching out to more than two persons.

### **III. CONCLUSION**

If the reach out level is so low in Urban areas itself, how can we expect it to reach the depressed classes. The Scheduled Castes, Scheduled Tribes and also the Other Backward classes will hardly be able to access the notifications which apply to them. There are a number of Non-Governmental Organisations working for the development of the depressed classes. The State must collaborate with such NGO's and look towards reaching out to the target groups to disseminate the Gazette information.

It is the duty of the legislature to bring it to the knowledge of the persons and it is the duty of the Court to check whether the laws passed are properly implemented. But, if the laws passed

are not even known to people, the question of implementation does not even arise.

The Supreme Court must give directions to the legislature and the executive to make every effort to ensure that the laws framed by it must reach out to the persons to whom it is addressed. For instance, if the law is framed for the Scheduled Castes, the Government must set up a Board which can identify the Scheduled Castes living in different areas and must send in representatives from the Government. This may seem a tedious and cumbersome process, but has a number of benefits like increased employment opportunities and higher happiness and life satisfaction of the citizens of the country.

#### **IV. SUGGESTIONS**

The Supreme Court must also come out with guidelines that, in cases where actual notice is possible by serving it to the head of an Organisation, such can also be done. In case when schemes related to Labourers are made by the legislature, the actual notices can be sent to the Head of the Labour Unions instead of publishing the Constructive Notices in the newspapers. In this process, the labourers will actually come to know about the schemes applicable to them.

The idea of Constructive notices is narrow as it focuses only on notification of the law made or judgment passed. It does not consider the fact that a Welfare State must look forward to bringing it to the knowledge of the people. There is no emphasis on the bringing of it to the knowledge of the stakeholder. Every law is passed with a motive to attain something. The idea of Constructive notices leads to the reach out of the law to a very limited extent. If we actually have to reach out to everyone, we must come up with a newer and broader concept. The legislature and the judiciary must aim to convert the practice of Constructive Notices to Actual Knowledge. In Actual Knowledge, the idea is to bring to the knowledge of the people while in Constructive Notice, the idea was to just bring it to the notice of the person.

In Switzerland, there exists a concept wherein the citizens are made to vote on new laws framed by the legislature. The proposal for a new law is put to vote and the proposal formally comes out as a law only when the number of “yes” exceeds the number of “no” votes. There are also counter-proposals as well in the ballot sometimes. We live in a world where the laws are framed by the consent of the people. Can we not do something to even bring the laws to the knowledge of the affected person in our country?

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