Basic difference between Notification, Circular, and Press Release with Constitutional Validity and Challenge Mechanism

Introduction

In the dynamic landscape of Indian taxation and regulatory compliance, practitioners are frequently confronted with diverse forms of administrative communications—**Notifications**, **Circulars**, and **Press Releases**. Though often used interchangeably in practice, each of these carries **distinct legal weight**, **binding value**, and **scope of enforceability** under Indian law.

Understanding the **constitutional basis** and **judicial interpretation** of these instruments is crucial not only for tax professionals but also for corporates, consultants, and policy commentators who rely upon such instruments for **compliance, litigation strategy, and advisory roles**.

1. Notification ("the act of making known"):

Definition:

A Notification is a formal statutory instrument issued by the government under the powers conferred by a parent legislation such as the Income-tax Act or the CGST Act. It is published in the Official Gazette and has the force of law.

Purpose:

The purpose of a notification, especially in the context of Indian legal, tax, and administrative systems, is crucial for operationalizing law, delegating powers, and communicating policy decisions. Here is a detailed breakdown of its purpose, scope, and significance:

a. Implementation of Provisions of Law

Notifications are essential tools for giving effect to certain provisions of an Act or Rule. Many sections of statutes are framed to come into force only when notified by the government.

Example: Section 50 of the CGST Act dealing with interest on delayed tax payment was enforced by a notification.

b. Delegated Legislation

Laws enacted by Parliament or State Legislatures often delegate rule-making powers to executive authorities (such as the Ministry of Finance).

Notifications are a form of subordinate/delegated legislation, used to: Prescribe thresholds or limits (e.g., exemption limits), Notify dates of applicability, define classes of persons or goods and Specify rates, procedures, or exemptions.

Example: GST exemption limit of ₹20 lakh for registration was notified through a Central Tax Notification.

c. Exemptions & Concessions

The government is empowered under several tax laws (Income-tax Act, GST, Customs Act) to grant exemptions, rebates, or concessional treatments via notifications. Such exemptions usually contain conditions and are subject to judicial scrutiny.

Example: Notification granting exemption from GST on handloom products up to a specified value.

d. Modifications & Amendments

Notifications serve to amend, clarify, or update existing rules and schedules without re-passing the law in Parliament. This is useful to respond quickly to economic, legal, or administrative needs.

Example: Changes to HSN codes under GST or modifications to import duty rates.

e. Compliance & Operational Clarity

Notifications provide operational clarity for taxpayers and departments. They define applicable procedures, formats, timelines, and other compliance-related aspects. Absence of proper notification may result in inability to implement a statutory provision.

Example: Notification specifying quarterly return filing eligibility under GST.

f. Legal Enforceability

Only statutory notifications published in the Official Gazette are considered legally binding. Such notifications can create rights, obligations, exemptions, or penalties for taxpayers.

Note: **A notification becomes enforceable only after it is published in the Gazette, not merely when it is signed.**

g. Policy Implementation Tool

Governments use notifications as an instrument to quickly operationalize budget proposals, policy changes, or economic measures without waiting for full legislative amendment.

Example: Post-Budget changes in customs or excise duties implemented immediately through notifications.

▯ Constitutional Validity:

Backed by Article 245 and 246 of the Constitution which empower the legislature to make laws.

Articles 245 and 246 of the Indian Constitution deal with the legislative powers of the Parliament and State Legislatures. Article 245 defines the extent of laws made by these bodies, while Article 246 outlines the subject matter of those laws, dividing legislative powers into three lists: Union, State, and Concurrent.

a. Article 245: Extent of Laws

This article specifies that both Parliament and State Legislatures can make laws for their respective territories (whole or any part).

It also clarifies that laws made by Parliament can have extra-territorial operation, meaning they can apply outside India's territory, while state laws are generally restricted to the state's boundaries.

b. Article 246: Subject Matter of Laws

This article divides legislative powers between the Union (Parliament) and the States (State Legislatures).

It establishes three lists in the Seventh Schedule:

- **Union List:** Subjects exclusively for Parliament (e.g., defense, foreign affairs).
- **State List:** Subjects exclusively for State Legislatures (e.g., public order, police, local government).
- **Concurrent List:** Subjects where both Parliament and State Legislatures can make laws (e.g., criminal law, education).

In case of conflict, laws made by Parliament generally prevail.

Article 246(4) also empowers Parliament to legislate on any matter for any part of the country not included in the first two parts of the First Schedule, even if it is a state subject. Valid as long as it is within the scope of the enabling Act.

c. Article 265 requires that tax be levied only by authority of law – this includes valid notifications.

Article 265 of the Indian Constitution states that no tax shall be levied or collected except by the authority of law. This fundamental principle ensures that taxation is not arbitrary but is governed by laws passed by the legislature, providing a safeguard against the imposition of taxes without legal basis.

? Can a Notification Be Challenged?

Yes, a notification issued under a taxing statute can be judicially challenged before a High Court under Article 226 or before the Supreme Court under Article 32 of the Constitution of India. Courts have consistently upheld that delegated legislation, such as notifications, must conform to the scope and intent of the parent Act and cannot override or expand statutory provisions.

A notification may be struck down in the following circumstances:

a. Ultra Vires the Enabling Act

If the notification goes beyond the powers delegated by the parent legislation, it is liable to be quashed as being ultra vires. For example, prescribing a condition or levy that the Act does not contemplate.

b. Violative of Fundamental Rights

If the notification results in discrimination (violating Article 14) or restricts freedom of trade (Article 19(1)(g)) without reasonable justification, it can be held unconstitutional.

c. Retrospective Tax Burden

Although retrospective effect may be given to a notification under specific statutory authority, courts have ruled against unjustified retrospective imposition, particularly where it causes undue hardship or breaches legitimate expectation.

? How Can It Be Challenged?

a. **Writ Petition (Article 226 & 32) -** For violation of constitutional or legal rights.
b. **Appeal in Tribunal or Court -** As part of challenging assessment/order based on invalid notification.
c. **Public Interest Litigation (PIL) -** If the notification impacts the public at large.

? Judicial Precedent:

In Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. [(2018) 10 GSTL 401 (SC)], the Supreme Court held that rules/notifications cannot override the statute and must strictly operate within the limits defined by the parent law.

Example: GST Notification prescribing higher rate retrospectively can be challenged in High Court under Article 226.

<u>2. Circular ("clarificatory document")</u>

? Definition:

A Circular is an internal clarificatory document issued by government departments (like CBIC or CBDT) to ensure uniform interpretation and implementation of the law among departmental officers.

A circular is an administrative instrument issued by government departments like CBIC (under GST) or CBDT (under Income Tax) to:

- Clarify doubts in statutory interpretation,
- Standardize procedures,
- Issue directions to officers.

Unlike Acts or Notifications, circulars are not a form of legislation—they are a product of executive/administrative authority.

▯ Purpose:

A Circular is a clarificatory document issued by a governing authority (CBIC, CBDT, MCA). It explains, interprets, or guides regarding provisions of the law. It is administrative in nature, binding only on departmental officers, and not enforceable on taxpayers or courts unless it favors the assessee.

a. Clarification of Legal Provisions

One of the most important purposes of a circular is to clarify ambiguities or doubts in the interpretation of provisions of law, notifications, or rules. Circulars serve as interpretative aids for departmental officers and taxpayers.

Example: GST Circular No. 105/24/2019-GST clarified tax treatment of post-sale discounts.

b. Ensuring Uniformity in Implementation

Laws can be subject to differing interpretations by field officers. Circulars ensure standardization of interpretation and procedures across all jurisdictions and tax offices. This reduces disputes and promotes administrative consistency.

Example: CBDT circulars clarify how certain exemptions or deductions should be uniformly applied.

c. Internal Instructions to Departmental Officers

Circulars act as binding instructions to tax or enforcement officers on how to administer specific provisions. Officers must follow circulars, even if a court has taken a different view (unless the circular is withdrawn or overridden).

Binding nature: As per Ratan Melting & Wire Industries [(2008) 231 ELT 22 (SC)], circulars are binding on officers, not on taxpayers or courts.

d. Avoidance of Litigation

Clarifications issued through circulars help in resolving interpretational issues proactively, thereby preventing unnecessary litigation. They are often issued in response to stakeholder representations or field-level disputes.

e. Explanation of New Changes

Whenever new provisions are introduced by amendment or notification, circulars are used to explain the operational aspects. They offer procedural guidance or examples to aid implementation.

Example: Circulars issued after Union Budget explaining newly introduced TDS/TCS provisions.

f. Facilitating Compliance

Circulars often prescribe procedures, formats, or timelines to be followed, making compliance easier for taxpayers. Especially useful when law provides broad power, but practical steps are not legislated.

g. Crisis or Transitional Guidance

In special circumstances like a pandemic, GST migration, or IT system overhaul, circulars provide emergency instructions or temporary relaxation.

▯ Constitutional Validity:

No specific article explicitly mentions circulars. However, their validity and enforceability are indirectly derived from:

- **Article 73** (executive power of the Union),
- **Article 162** (executive power of the States
- **Article 265** (no tax shall be levied or collected except by authority of law),
- **Article 14** (equality before law).

Thus, a circular is constitutionally valid only to the extent that:

- It does not override or conflict with statutory provisions, and
- It does not violate fundamental rights (e.g., discrimination or arbitrary treatment under Article 14).
- Circulars are administrative in nature and not part of primary or delegated legislation.
- They cannot override the law.
- Binding on departmental officers, not on taxpayers or courts.

▯ Can a Circular Be Challenged?

Circulars are administrative tools, not laws. it can be challenged if:

a. **Conflict with the statute** - Circulars cannot override statutory law or judicial interpretations.
b. **Violate constitutional provisions** - If it is arbitrary, discriminatory, or unreasonable, courts can strike it down.
c. **Are arbitrary or impose unlawful burdens** - If a circular creates a tax or penalty not supported by law, it violates Article 265 of the Constitution, Executive instruments like circulars cannot retrospectively impose burdens unless statutorily empowered.

They are binding only on the department, not on taxpayers or courts. Thus, if a circular adversely impacts a taxpayer and lacks legal backing, it is open to constitutional and legal challenge**.**

▯ How Can It Be Challenged?

a. **Writ Petition (Article 226) High Court -** for violation of constitutional rights or ultra vires action.

b. **Appeal in Tribunal or Court -** If challenge arises during assessment or adjudication.
c. **Public Interest Litigation (PIL) -** If affecting large public interest segment.

▯ Judicial Precedent:

CCE v. Ratan Melting & Wire Industries [(2008) 231 ELT 22 (SC)]: Circulars are not binding on courts or assessee(s).

K.P. Varghese v. ITO (1981) 131 ITR 597 (SC): Circulars can clarify but not create new tax liability.

3. <u>Press Release ("official public statement")</u>

▯ Definition:

A Press Release is a public communication tool used by the government to inform the public or media about policy decisions, clarifications, or upcoming legal changes.

It is not legally binding like a notification or circular, but serves a vital communication and transparency role.

▯ Purpose:

A press release is an official public statement issued by a government, corporate entity, or organization to the media and general public, intended to convey important information, clarify positions, or announce developments.

a. Public Communication of Policy or Decision

Governments and authorities use press releases to inform citizens of key policy changes, economic reforms, tax measures, or relief schemes.

Example: The Finance Ministry releases post-budget clarifications via press releases.

b. Clarification or Rebuttal

Used to dispel rumours, clarify misconceptions, or correct media reports on sensitive matters.

Example: CBIC or CBDT may issue a press release to clarify no change in GST rates despite speculation.

c. Media Engagement and Coverage

Designed to be picked up by newspapers, digital media, and TV, a press release ensures consistent and factual coverage across platforms.

d. Crisis Management or Damage Control

In cases of economic turmoil, legal judgments, or public outrage, press releases are tools to control narrative, reduce panic, or defend positions.

e. Supplement to Formal Instruments

Press releases often accompany notifications or circulars to explain them in simple language.

f. Corporate Announcements

In the private sector, companies use press releases to announce of Mergers, acquisitions, IPOs, Financial results, Product launches, Leadership changes etc.

? Constitutional Validity:

A press release is a non-statutory, non-binding public communication tool issued by a government department, ministry, regulatory body (like CBIC, CBDT), or corporate entity. While it does not derive authority from any specific provision of the Constitution, its validity and acceptability in the legal framework can be assessed under constitutional principles.

? Can a Press release Be Challenged?

Press release can't be challenged directly but:

a. **If it misrepresents legal obligations** – Court will rely on actual law, not the press statement.
b. **If it tries to create enforceable rights** - Not allowed unless backed by notification or legislation.
c. **If it causes unreasonable classification** - Can be struck down under Article 14.

? Comparative Summary Table

Feature	Notification	Circular	Press Release
Legal Basis	Delegated/Subordinate Legislation	Administrative clarification	Public Advisory / Communication
Issuing Authority	Government under enabling Act (e.g., CBIC, CBDT)	Departmental Authority (e.g., CBIC, CBDT)	Government / Ministry / Authority
Binding On	Taxpayers, Department, Courts	Departmental Officers only	None (only informative)
Published In Gazette	Yes	No	No
Can be Challenged	Yes, Writ under Article 226/32, PIL, Tribunal Appeals	Yes, Writ under Article 226, Tribunal Appeals, PIL	Not directly, but action taken based on it can be challenged
Constitutional Validity	Valid if within enabling Act	Not part of legislation must not violate Article 14 or override statute (interpretative only)	No constitutional standing

Example	GST Notification No. 13/2017	Circular No. 105/24/2019	Press release of 53rd GST Council meeting