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Delegated Legislation: An Overview of its Types, Need, Criticism and Constitutional Validity in India

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ABSTRACT

In general, Delegated Legislation refers to a type of legislation that is made by the Executive branch in compliance with the powers provided to it by the Primary Authority to carry out, oversee, and execute out the needs of the Primary Branch. It can be characterized as laws enacted by any entity operating under parliamentary power. It is also referred to as subordinate legislation.

The Supreme Court of India created legal standards based on a number of rulings that are still used as a benchmark for determining whether a delegation is inherently constitutional or not. The Supreme Court's rulings have the following implications:

- The court decided in Indian Oil Corporation V. Municipal Corporation, Jalandhar, that any delegated legislation had to be consistent with the parent act. Therefore, it shouldn't contravene any such legislative policies. In other words, the court made a suggestion that no delegate is supposed to have more legislative power than any other delegate.*
- The creation of policies to oversee specific acts is one of the fundamental legislative responsibilities that cannot be delegated by the legislature. An alternate interpretation of the same line would imply that it is impossible to delegate non-essential tasks, regardless of their importance.*
- The courts have determined to recognize any dissenting declaration as a proper policy for the Act in question, which will be necessary for assessing the grounds of legality, following extensive consideration, discussion, and deliberation.*
- The Supreme Court made it quite evident that judging an authority's competence shouldn't be based on why it passed legislation through delegation. Instead, the court would take into account the importance and relevance of the background and context in which the authority to make rules was used.*

Keywords: *Delegated Legislation, Needs, Types, Control Mechanism.*

I. INTRODUCTION

“There would be an end to everything, were the same man or the same body, whether of the

¹ Author is a student at Faculty of Law, Delhi University, India.

nobles or the people, to exercise those three powers, that of enacting laws, that of executing the public relations and of trying the causes of the individuals”

- **Baron de Montesquieu**

The Constitution of India gives the Indian Legislature (i.e. the Parliament), the authority to pass national laws. It goes without saying that no other institution can be granted similar authority. But the Legislature cannot be expected to carry out all of the many different and varied tasks associated with a welfare state. The amount of legislation that needs to be approved in a year and the relatively short amount of legislative time available for the purpose mean that the Parliament will not be able to enact all of the necessary laws. In such cases, the role of delegated legislation comes into the forefront.

Delegated Legislation, also referred to as “secondary legislation” or “subordinate legislation” is law made by the executive authority under powers given to them by the ‘primary legislation’ (i.e. the Parent Act) in order to implement and administer the requirements of primary legislation.

Therefore, all law-making that occurs outside of the legislature and is typically stated as rules, regulations, orders, bye-laws, notifications, schemes, directives, etc. is referred to as delegated legislation.

Delegated Legislation has been defined by Salmond as “that which proceeds from any authority other than the sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority.”

II. TYPES OF DELEGATED LEGISLATION²

1. **Executive Legislation:** Executive legislation is the term used for rules and regulations made by the executive branch of the government. The Income Tax Act, for instance, gives the Ministry of Finance the authority to issue rules that provide instructions on how tax laws should be administered.
2. **Subordinate Legislation:** Laws framed by authorities working beneath the legislature are referred to as subordinate legislation. It includes the policies and guidelines developed by regional administrations, city councils, or panchayats to oversee particular sections of the nation.
3. **Regulation – making power:** It grants administrative bodies the authority to formulate

² Shreya Tripathi, Delegated Legislation and its Control, iPleaders by LawSikho (June 16, 2024, 12:40 P.M.) <https://blog.iplayers.in/delegated-legislation/>

rules and regulations for particular industries or regions. To guarantee investor protection and market integrity, for instance, the Securities and Exchange Board of India (SEBI) has the jurisdiction to adopt rules and regulations for the securities market.

4. **Emergency Legislation:** When a sudden event or national emergency arises that necessitates immediate action, emergency laws are passed. Under Article 152 of the Indian Constitution, the President of India may proclaim a state of emergency. The Executive branch may then promulgate directives and ordinances to deal with the situation as it develops.
5. **Statutory Orders:** Statutory orders are official documents that authorized entities issue to give specific instructions, recommendations, or directions on how to apply laws that already exist. For instance, to control banking operations, monetary policies, and compliance requirements, the Reserve Bank of India (RBI) sends notifications and circulars to banks and other financial organizations.
6. **Bylaws and Rules:** Regulations created by statutory bodies or authorities to control particular companies, occupations, or associations are known as bylaws and rules. These laws are frequently intended to regulate particular businesses, educational institutions, or trade associations. The Institute of Company Secretaries of India (ICSI), for example, creates the laws and guidelines that control the behavior, credentials, and expectations of company secretaries all over the nation.

III. NEED OF DELEGATED LEGISLATION³

The Committee on Ministers' Powers (CMP), also known as the Donoughmore Committee, states that the following causes have contributed to the expansion of delegated legislation:

- a) **Pressure on Parliament:** The welfare state's expanding activities are causing the state's affairs to grow daily, making it impossible for the legislature to dedicate enough time to every legislative detail. As a result, the skeleton of legislative framework laid down by the Parliament gives the executive the authority to enact laws based on the basic policies that are formulated by the legislature. For instance, the Information Technology Act, 2005, grants the Executive authority to make rules while the Parliament only lays out the fundamental policies.
- b) **Technicality of subject – matter:** Because the subjects on which the Legislature must pass laws are occasionally of a technical nature and necessitate the knowledge of

³ 1 Umesh Jatav, *Administrative Law Cases| Text 29* (Arora Graphics Publication 2024)

professionals in those fields—skills that members of the Parliament may not possess—legislative power may occasionally be assigned to experts to address technical issues.

- c) **Flexibility:** Since the Parliament cannot account for every scenario while enacting legislation, certain provisions must be incorporated for unanticipated events requiring immediate action. Since legislative amendment is a lengthy and slow procedure, the dilemma is resolved by assigning this task to the Executive, which may act quickly to address the issue.
- d) **Experiment:** While supreme legislation is unchangeable, delegated legislation is not. As a result, the practice of delegated legislation allows the government to experiment. This method makes it possible to apply the provisions in a way that allows for the necessary adjustments.
- e) **Emergency:** During an emergency, it is not possible for the legislature to take swift action to resolve each and every issue. The delegated law is the only practical solution in such a situation. As a result, the Executive has more power to deal with matters during wartime and other national catastrophes like floods and epidemics.

IV. CONTROL MECHANISM OF DELEGATED LEGISLATION⁴

This refers to a set of protocols intended to ensure the legitimacy, accountability, and constitutionality of laws enacted by administrative bodies with the authority vested in them by the legislature. There are three categories into which the control mechanism of delegated legislation can be classified: -

1. Legislative/ Parliamentary Control
2. Procedural/ Administrative/ Executive Control
3. Judicial Control

1. **Legislative/ Parliamentary Control:**

Legislation is the responsibility of the legislature in a parliamentary democracy. However, in the event that the legislature wishes to transfer this authority to the Executive, it holds every right and obligation to keep an eye on how the Executive, acting as its representative, carries out its mandate. The legislature exercises threefold control on delegated legislation, which are as follows: -

- i) Proposal for delegating power

⁴ Institute of Company Secretaries of India, Drafting, Pleading and Appearances 5-7 (2020)

- ii) Requirement of laying
- iii) Committee on subordinate legislation

i) Proposal for delegating power:

Parliament wields its influence over delegated legislation through debate on the provisions of the bill enabling delegation. During these talks, it's possible that the issue of whether delegation is required and the details of the regulations permitting it will come up.

A memorandum of Delegated Legislation is usually introduced with bills in the legislature. The following may be included in these memos:

- a) Full purpose and effect of the delegation of power
- b) Points which may be covered by the rules
- c) Particulars of the subordinate authorities or the persons who are to exercise delegated power

ii) Requirement of laying:

Laying refers to presenting the lower-level legislation to the Parliament for appropriate review. The ultimate legislative body, the Parliament, grants the Executive the right to enact laws; but, laws enacted by subordinate authorities must be brought before the Parliament for approval. This is referred to as 'laying'.

The members are informed of such laying in the daily agenda of the House. The advantage of this procedure is that members of both the houses have such chances as to:

- Modify or repeal the enactment under which obnoxious rules and orders are made
- Revoke the rules and orders themselves

iii) Committee on subordinate legislation:

The Parliamentary Control over delegated legislation can also be exercised by getting the delegated legislation scrutinized by Parliamentary Committee of the Rules, Regulations, Bye – Laws and Orders. Under the Rule of Procedure and Conduct of Business of the Lok Sabha, provision has been made for a Committee which is called 'Committee on Subordinate Legislation'. It is presided over by a Member of the Opposition. The Committee examines as under: -

- The statutory rules, orders, bye – laws, etc. made by any law – making authority and the reports to the House whether the delegated power is being properly exercised within the limits of the delegated authority, whether under the Constitution or under an Act of

Parliament.

- The Subordinate legislation is in accordance with the general objects of the Constitution of or the Act pursuant to which it is made.
- It contains matter which should more properly be dealt within an Act of Parliament.
- It contains imposition of any tax.
- It, directly or indirectly, ousts the jurisdiction of any law.
- It gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly confer any such power.
- It is constitutional and valid.
- It involves expenditure from the Consolidated Fund of India or the Public Revenues.
- It's form or purpose requires any elucidation for any reason.
- It appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made; and
- There appears to have been made unjust delay in its publication or its laying before the Parliament.

2. Procedural/Administrative/Executive Control:

The best way to protect the public from the dangers of misusing delegated legislation is to establish a process that the delegates will follow while creating the laws and regulations. Acts of Parliament often compel other bodies or authorities to follow certain procedural standards when granting them the power to enact rules and regulations, etc. These processes might entail contacting pertinent parties for consultation, publishing draft rules and regulations, etc. These formalities might consist of having conversations with interested parties, disseminating proposed rules and legislation, considering objections, examining submissions, and so forth.

If subordinate legislation broke statutory procedural requirements, courts would rule that it was ultra vires the parent statute. Procedure-wise, how well the doctrine of ultra vires is applied would largely depend on how the particular statute is worded. If the language was clear about which bodies should be consulted and made it possible to prove non-compliance, then it would be possible. But if the procedural requirements were merely directory, their noncompliance would not impair the legality of the subordinate legislation.

When determining whether or whether a statute's provisions to this effect are mandated by law,

the courts take a variety of factors into account. They look at the overall legislative framework, focusing on the relationship between these components and the stated goal of the legislation. The goal of the law, the provisions contained in the Act's body, and the nature of the subject matter to be governed must all be carefully considered in order to ascertain the legislature's intention.

3. Judicial Control:

Judicial Control over delegated legislation can be exercised at the following two levels: -

- Delegation may be challenged as unconstitutional; that is the delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary; or
- That the statutory power has been improperly exercised.

The judiciary is established in a democracy as the exclusive arbiter of constitutional disputes, the supreme interpreter of popular will, and the Sovereign Guardian of liberty and freedom. The supreme authority to prevent the exercise of total, arbitrary, and irrational power is the judiciary. Human rights are protected and the tyranny of the majority is restrained by judicial watchfulness; in other words, judicial rulings counterbalance executive action.

The Court can inquire into whether delegated legislation is within the limits laid down by the Statute. The validity of the rules may be assailed as the stage in two ways: -

- That they run counter to the provisions of the Act; and
- That they have been made in excess of the authority delegated by the Legislature.

V. JUDICIAL VIEW ON CONTROL OF DELEGATED LEGISLATION⁵

1. Atlas Cycle Industries Ltd. Vs. State of Haryana, AIR 1979 SC 1149

Brief Facts of the Case:

During the course of on spot check carried out by the Development Officer of the Directorate General of Technical Development, Delhi, of the B.P. Sheets lying in Appellant 1's factory at Sonapat, he discovered that it had acquired black plain iron sheets of prime quality from various parties at a rate higher than maximum statutory price fixed for such sheets by the Iron & Steel Controller. Based on this discovery, the appellants were prosecuted under Section 120B of the Indian Penal Code, 1860 read with Section 7 of the Essential Commodities Act, 1955.

Aggrieved by the order, the appellants moved to the High Court of Punjab & Haryana inter alia

⁵ Atlas Cycle Industries Ltd. Vs. State of Haryana, AIR 1979 SC 1149

on the grounds that the Control Order & the Notification which formed the basis of their prosecution did not have the force of law as they had not been laid before the Houses of Parliament within a reasonable time as required under Section 3 (6) of the Essential Commodities Act, 1955. The high Court dismissed the petition overruling the contentions of the Appellants and hence the case has landed before the Hon'ble Supreme Court of India.

Issues involved:

- a. Whether the laying procedure embodied in Section 3 (6) of the Essential Commodities Act, 1955 obligatory?
- b. Whether the omission to lay the notification under question before the Parliament makes it void?

Observation:

The Supreme Court started by scanning the relevant provisions of the Act, order and notification. It was reiterated at the very outset that the word “shall” is not determinative & conclusive of a provision's mandatory or directory nature, but it has to be ascertained by deducing the intention of the Legislature from the design, nature and scope of the statute.

The Hon'ble Court further stated that the two conditions for regarding a provision as directory are: -

- a. Absence of any provision for meeting the contingency of the provisions not being complied with; and
- b. Serious general inconvenience & prejudice that would be caused to the general public if the Act of the Government is declared invalid for non – performance with the particular provision.

Decision:

The Supreme Court held that the impugned provision of law provided that every order by the Central Government or its officer or authority “shall be laid before both Houses of Parliament as soon may be after it is made” as merely directory.

Section 3 (6) of the Essential Commodities Act, 1955 provides for simple laying in which the Parliament has no power either to approve or disapprove the order, therefore, simple laying is merely directory & non- laying would not make the order void.

2. Govindlal Chhaganlal Patel Vs. Agricultural Produce Market Committee, AIR

1976 SC 263⁶**Brief Facts of the Case:**

An inspector of Godhra Agricultural Produce Market Committee filed a complaint against the Appellant (Govindlal) charging him with purchasing a certain quantity of ginger in January & February, 1969 without obtaining a license as required by the Act. The learned Magistrate accepted the factum of purchase but he acquitted the appellant on the ground that the relevant notification in regard to the inclusion of ginger was not shown to have been promulgated and published as required by the Act.

Decision:

The Supreme Court held that the notification issued under Section 6 (5) of the Act, like that under Section 6 (1), must also be published in Gujarati in a newspaper having circulation in the particular area. This requirement is mandatory and must be fulfilled. Admittedly, the notification issued under Section 6(5) on February 16, 1963 was not published in any newspaper at all, let alone in Gujarati. Accordingly, the inclusion of new varieties of agricultural produce in that notification lacks legal validity and no prosecution can be founded upon its breach.

The Court therefore had set aside the judgement of the High Court while restoring that of the learned Judicial Magistrate of First Class, Godhra. Fine, if any paid, was ordered to be refunded to the appellant.

VI. CRITICISMS OF DELEGATED LEGISLATION⁷

Delegated legislation is criticized for a number of reasons despite its many advantages.

1. One argument is that because delegated legislation allows authorities to other than legislators to enact and amend laws, overlapping functions result.
2. The democratic ideal is violated by the fact that unelected people pass an excessive amount of legislation.
3. Delegated legislation is not as scrutinized by parliament as primary legislation is. As a result, delegated legislation is not subject to parliamentary oversight, which could lead to conflicting laws.
4. Consequently, Parliament did not intend for the power to be used in ways that could be achieved through delegated legislation when it granted the authority through the Act of

⁶ Govindlal Chhaganlal Patel Vs. Agricultural Produce Market Committee, AIR 1976 SC 263

⁷ Harsha Jesawani, Analysis of the Concept of Delegated Legislation, iPleaders by LawSikho (June 19, 2024, 1:23 PM), <https://blog.iPLEaders.in/analysis-concept-delegated-legislation/>

Parliament.

5. In general, there is not enough public awareness of delegated legislation. Considering that the public was not informed of the law passed by a legislative authority. However, the legislation passed by the Parliament are made public. The vast amount of legislation that is being delegated is the cause of the lack of publicity. There have also been concerns raised about the overabundance of laws established by delegated legislation.

VII. CONSTITUTIONAL VALIDITY OF DELEGATED LEGISLATION⁸

It is possible to comprehend the legitimacy and constitutionality of delegated legislation in India by examining two discrete time periods: the pre-independence and post-independence eras.

i) Pre – independence Period: -

Queen v. Burah (1878) set a precedent in which the Privy Council approved conditional legislation before India gained its independence. Legislative authority was granted to the executive in this instance.

In this case, the legislature passed a bill exempting Garo Hills from the jurisdiction of the courts and the relevant legal framework. The Act's effective date was to be determined by the Lt. Governor. The Privy Council, which maintained the legality of the legislation, stated that the Indian Legislature possesses complete legislative authority and was neither an agent nor a delegate of the Imperial Parliament. On the grounds that the Act is merely conditional legislation and that the Governor's authority is restricted to extending the Act's provisions that have previously been approved by the relevant body following the fulfillment of certain conditions, it upheld the Act's constitutionality.

ii) Post – Independence Period: -

Legislative authority is not granted by the Indian Constitution in the same manner as by the British Parliament. The extent to which delegation is permitted in India is determined by the specific provisions of the Indian Constitution. Legislative concerns do not grant an infinite right to delegate. The transfer of power from the legislative to the executive branch was upheld by the Indian Supreme Court in the 1954 case of **Raj Narain Singh v. Chairman, Patna Administration Committee**.

This case gave the local administration the power to expand the provisions of the Bengal Municipality Act. However, the Supreme Court decided that the transfer of powers was

⁸ LawBhoomi, <https://lawbhoomi.com/constitutionality-of-delegated-legislation/> (last visited June 19, 2024)

unlawful in the 1959 case of **Hamdard Dawakhana v. Union of India** due to its vagueness. It came to the conclusion that the Center's jurisdiction to identify ailments and conditions under the Drug and Magic Remedies (Objectionable Advertisements) Act of 1954 was "uncontrolled" and outside the confines of permissible legal delegation, rendering it illegal.

In a 1973 ruling, the Supreme Court emphasized that its understanding of delegated legislation had evolved in response to the practical needs of a modern welfare state.

iii) Status under Indian Constitution: -

According to the Indian Constitution, the legislature has the authority to designate responsibilities to other institutions and to establish rules for implementing the laws it enacts. In the case of **D. S. Gerewal v. State of Punjab**, the Supreme Court of India made it clear that Article 312 of the Indian Constitution governs the authority of delegated legislation. According to **Justice K.N. Wanchoo**, nothing in the wording of Article 312 diminishes the regular authority of delegation, which typically resides with the legislature. The phrase "Parliament may by law provide" in Article 312 should not be interpreted to mean that laws enacted in accordance with Article 312 cannot permit delegation.

The legal system in England allows Parliament to allocate an unlimited number of functions, whereas Congress and Parliament in America and India, respectively, can only delegate particular authorities. This suggests that their power is neither unrestrained or unchecked. Therefore, delegated legislation is allowed by the Indian Constitution, but it is subject to specific and well-defined restrictions to ensure that it is used in an orderly and transparent manner. In other words, India acknowledges that delegated legislation is constitutional, but there are safeguards in place to ensure that it complies with the parent act.

VIII. CONCLUSION

Ultimately, it may be stated that delegated legislation is essential given the rise in the number of laws and associated complications. However, as the amount of delegated legislation increases and the likelihood of abuse of power grows, there is also an increasing need to regulate the amount of delegated legislation. Judicial control is one way to manage the transfer of power regardless of legislative and procedural control. Therefore, in addition to challenging the validity of the parent act and the delegated legislation, one may raise substantive ultra vires challenges against the delegated law. It is also possible to argue against the latter since it lacks reasoning and may be arbitrary.

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