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Deliberate Discussion on Parliamentary and Procedural Control of Delegated Legislation

SHIVANI SINGH¹

ABSTRACT

Government intervention has almost permeated every facet of human endeavour in the modern Welfare State, prompting the introduction of numerous laws to rein in this steadily growing activity. Delegated legislation is required because the Legislature lacks the time to analyse, discuss, and adopt all the regulatory actions required to carry out the law that has been approved. Laws must be flawless in all technical aspects since the process of establishing laws has become complex and technological. Legislation that has been delegated simply means that it has been created with the consent of the legislature but by someone or something else. In India, the legislature has extensive delegation powers, although these powers are limited in order to prevent excessive delegation. The majority of the legislation is bureaucratic and is carried out by executives. Thus, creating a need of controls over delegated legislation as it is crucial to ascertain that the executive is not to be able to act arbitrarily. This study attempted to analyse two forms of control mechanisms i.e., Parliamentary and Procedural control over delegated legislation.

Keywords: *Legislative Control, Procedural Control, Delegated Legislation, Laying Procedure.*

I. INTRODUCTION

One of the most contentious issues in modern democracy is delegated legislation. Legislative, executive, and judicial branches are the three pillars on which Indian democracy is entirely based. Despite this, the media is also seen as the fourth pillar of democracy. The constitution has allocated specific duties to each of the pillars. The Indian Constitution grants the legislature the authority to draught national laws. Given that India is a welfare state, it is essentially impossible for this fundamental pillar of democracy to carry out all of the mandated duties. Delegated law comes into play in this situation. If the executive has a responsibility to carry out certain tasks that are under the purview of the legislature, the delegated legislation becomes a crucial element. This is also known as "Secondary legislation" and "Subordinate Legislation," among other names. The body of law that grants the executive branch the power to pass laws is

¹ Author is a student at Amity University, Patna, India.

known as the "Enabling Statute" or "Parent Act".

(A) Meaning and Definition

The transfer of legislative authority from a higher to a lower authority is referred to as delegation of power and the legislative authority given to the executive or administration for enacting and enforcing particular laws is referred to as delegated legislation. The most simple meaning of "delegated expression" is: The law that has been passed by an organ other than the legislature after the legislature has delegated that authority to that specific organ.

According to **Salmond**, "*delegated legislation is the legislation that comes from any form of authority apart from the sovereign power and depends on a supreme authority for the continuance of its existence*".²

According to **Jain and Jain**, *Delegated legislation is used in two senses: (a) is the exercise by a subordinate agency of the legislation powers delegated by the legislature. (b) the subsidiary rules themselves which are made by the subordinate authority in pursuance of the power conferred on it by the legislature*.³

The first part means that the body that makes up the legislation is under legislature. The power of the legislature is executed by an authority that is not the legislature but with the use of powers granted to them by the legislature.

The second part means every rule, bye-laws, regulations, order and so forth are all comprised in delegated legislation.

As was observed by **Lord Coleridge, C.J.**, *the word delegation implies that powers are committed to another person or body which are as a rule, always a subject to resumption by the power delegating*.⁴ The word 'delegate' means little more than an agent. An agent exercises no power of his own but only the power of his principle.⁵ In general, a delegating body will retain not only power to revoke the grant, but also power to act concurrently on matter within the area of delegated authority except insofar as it may already have become bound by an act of its delegate. It is designate by various names, such as, *rules, regulations, bye-laws, orders, schemes* etc.⁶

Emphasizing on the need of subordinate legislation, the Supreme Court *in Gwalior Rayon Mills*

² Salmond, Jurisprudence, 12th Edn., p. 116

³ <https://www.scribd.com/document/474544869/M-P-jain-administrative-law-Simran-Sabharwal>,

⁴ As cited in *Ishwar Singh v. State of Rajasthan*, (2005) 2 SCC 334, 338 (para 8): AIR 2005 SC 773,

⁵ *Ibid.*

⁶ See, *Tata Iron & Steel Co. v Workmen*, Air 1972 SC 1918, K.I. Shephard

Mfg. (Wvg.) Co. Ltd. v. Asst. Commissioner of Sales Tax observed: “Most of the modern socio-economic legislations passed by the Legislature lay down the guiding principles and the legislative policy. The Legislatures because of limitation imposed upon by the time factor hardly go into matters of detail. Provision is, therefore, made for delegated legislation to obtain flexibility, elasticity, expedition, and opportunity for experimentation. The practice of empowering the executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of modern welfare State.”⁷

Furthermore, unless the original delegator expressly consents to the transfer or there is an implied right to do so, an agent who has been given decision-making authority by a principal or higher authority is not allowed to delegate that authority to a sub-agent. *Delegatus non potest delegare*, which literally means that the person to whom power is assigned cannot further transfer the power, is the source of this fundamental concept of administrative law.

II. CONTROL MECHANISM OVER DELEGATED LEGISLATION

Whatever prejudices or presumptions there may have been in the past about delegated legislation, they are now recognised as unavoidable. Therefore, rather than arguing against delegated law, it would be more vital to take into account the controls and safeguards that should guide how it operates in the country. The legislature must unquestionably assign some of its legislative authority in order for legislation to be delegated. Administrative law is frequently used to resolve matters based on principle. The system of delegated legislation considerably improves the executive branch's position while impairing the legislative branch.⁸ It is superfluous to stress that the executive's control over delegated legislation is a power with huge consequences: it is scarcely less effective than legislative power in the hands of the legislature in terms of affecting private individuals' interests and rights.

It is undemocratic in the sense that while legislation by the legislature is subject to the customary democratic safeguards of publicity and debate both inside and outside the legislature, legislation by the administration is not subject to these safeguards, losing "that safeguard of liberty which depends on the law-making power being exercised by the elected representatives of the people who will be affected by the laws that are made." Self-government is threatened when the elected officials do not adequately oversee the creation of the laws that the populace must abide by⁹. The majority of delegated legislation has a bureaucratic bent. If the administration is not to be

⁷ A.I.R. 1974 S.C. 1660 (1667)

⁸ M.P. Jain, *Indian Constitutional Law* 129 (1962)

⁹ Wade and Phillips, *Constitutional Law* 26 (6th Edn 1960)

given carte blanche to act arbitrarily, the problem of restrictions over delegated legislation becomes crucial. Therefore, various principals regarding control over delegated legislation has been provided and some of them are, judicial control, legislative control , procedural control e.t.c.¹⁰

(A) Parliamentary Control of delegated legislation

In a parliamentary democracy, the legislature's role is to pass laws. If the legislature seeks to transfer its legislative authority to the executive for any reason, it has the right as well as the duty, as principal, to oversee how its agent, the Executive, performs the agency given to it. Since the legislature is the one who grants the executive branch with legislative authority, it is primarily up to it to ensure that this authority is used legally, to monitor and control how it is actually used, and to keep the executive branch from abusing it or using it for improper or objectionable purposes.

Because the Legislature grants the Administration the authority to enact laws, and because it is the Legislature's primary responsibility to oversee how those laws are implemented, a comprehensive system of legislative oversight of delegated legislation has only been established in India.¹¹

a. Memorandum on delegation

The process of Parliamentary control over delegated legislation begins with the delegation stage itself. A bill that proposes the delegation of legislative authority must follow the rules of procedure for each House of a Parliament and that shall be “accompanied by a memorandum explaining such proposals and drawing attention to their scope, and stating also whether they are of exceptional or normal character.¹²” The Lok Sabha Committee on Subordinate Legislation described the norm, which is of an informal nature, as obligatory. It has also been emphasised that a bill's memorandum should fully explain the purpose of transferring authority to lower-level officials, the areas, issues and subjects that may be covered by rules, the specifics of the subordinates who will be using the delegated legislation, and how it will be used. The memorandum's objective is to draw lawmakers' attention to the bill's provisions relating to the delegation of legislative power.¹³ In order to investigate the scope of the powers that will be delegated, the Speaker may also submit measures to the Committee that contain provisions for

¹⁰ See Jain, “Parliamentary Control of Delegated Legislation in India, Public Law 33 (1964),

¹¹ M.P Jain, “Parliamentary Control of Delegated Legislation in India”, PUBLIC LAW

¹² Lok Sabha Rule 70, Rajya Sabha Rule 65

¹³ Lok Sabha (First Report) (1954); Lok Sabha (Second Report) (1964)

delegation of legislative functions.¹⁴

b. Laying procedure

The "laying procedure" is the second step in the legislative control process after the rules are established. The Apex Court observed that there are three possible laying clauses that take on different forms depending on the level of control that the Legislature may wish to exert in the case of *Atlas Cycle Industries Ltd. v. State of Haryana*¹⁵. These clauses are:

1. Laying without additional procedures
2. Laying is contingent to affirmative resolution.
3. Laying subject to negative resolution: A technique used to enact legislative oversight of delegated legislation necessitates bringing Rules that serve as a brake on excessive delegation to the Legislature. The various laying procedure variations include:
 - The simplest laying formula, which calls for regulations to be established before the Legislature, serves merely an instructive function. The Houses are informed by this formula of the details of the legislation that has been entrusted to them under various statutes.
 - In such cases, the rules are laid only in the draft form and become effective after the stipulated period. The procedure of laying rules before the Legislature with an affirmative resolution requires the assent of the House. For instance, Article 352 of the Constitution envisages that a proclamation of emergency shall be laid down before each House of the Parliament and “shall cease to operate at the expiration of one month” unless it is approved by both the Houses of Parliament. Similarly, Article 356 of the Constitution lays down that a proclamation issued by the Central Government, taking over a State’s governance, has to be presented before both the Houses of Parliament which will also cease to operate after the expiry of two months unless approved by both the Houses. However, in other circumstances, the delegating statute may require that the rules be established before the expiration of their period of enforcement or

¹⁴ Direction 103 A of the Speaker; Directions by The Speaker Lok Sabha66 (3rd Edition, 1980)

¹⁵ (1979) 2 SCC 196; AIR 1979 SC 1149

upon the adoption of a resolution by the Houses confirming these rules. In India, this technique of laying while affirming is less common. Whether it should be employed or not depends on the delegating statute in question. Two acts, the Essential Services Maintenance Act of 1968 and the Salaries and Allowances of Ministers Act of 1952, both follow the affirmative method¹⁶. According to the Rajya Sabha Committee on Subordinate Legislation, the affirmative method will increase the efficacy and significance of parliamentary control.

- The third form of laying method involves annulling the draught rules laid before the legislature and is known as laying with a negative resolution.

In the present scenario, the laying formula occurs more frequently in the Central legislation, and a standard formula has been developed for this purpose. The regulations are not required to be presented to the House within a specific window of time following their promulgation. The laying procedure occurs after the regulations are made, and they take effect immediately.¹⁷ They can change the regulations or even throw them out if both Houses agree to do so. The rules are affected by the modification or annulment, and depending on the situation, they either continue to be in effect but with amended terms or stop having any. This laying formula is merely a guide and is not required i.e., it is directory in nature and not mandatory¹⁸. According to Pearce, laying procedure must be viewed as required in order for the Parliament to be able to examine delegated legislation, which is a crucial step in the law-making process.¹⁹

c. Laying procedure and judicial review

Delegated legislation is nevertheless subject to judicial scrutiny under the laying procedure. Even though regulations are laid out, they are not legitimate if they violate the statute that gave rise to them. The courts may nevertheless examine them in light of the pertinent statute. The court's authority to rule on a notification's validity has not been eliminated only because it must be laid before the Parliament, it has been held in a number of cases. The Supreme Court has agreed with the idea in a number of cases as well²⁰, observing, "The fact that the regulations...when made have to be laid down before the Legislature concerned does not confer

¹⁶ Krishna Kumar Singh and Ors. v. State of Bihar and Ors. (2017) 3 SCC 1 : 2017 (2) SCJ 136 : (2017) MLJ 698

¹⁷ Thanval v. Union of India, AIR 1959 Raj 206

¹⁸ Prohibition & Excise SUPDT v. Toddy Toppers Co-op. Society, (2003) 12 SCC 738: AIR 2004 SC 658

¹⁹ D.C Pearce, "Delegated Legislation in Australia and New Zealand" (1977)

²⁰ Dai-Ichi Karkaria Ltd. v. Union of India, AIR 2000 SC 1741: (2000) 4 SCC 5

any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make, regulations is confined to certain limits and made to flow in a well-defined canal with stipulated banks, those made or shown and found to be not made within its confines but outside them, the Courts are bound to ignore them when the question of their enforcement arises.²¹”

d. Parliamentary committees

Two Committees on Subordinate Legislation, one in each House, serve as additional channels for parliamentary control. Compared to the Rajya Sabha Committee on Subordinate Legislation, the Lok Sabha Committee on Subordinate Legislation is older. The former was founded in 1953, whereas the later was founded in 1964. *Thanval v. Union of India*, delegated legislation in India, has become more successful as a result of the creation of these Committees. The Committees assist in automatically reviewing the rules that are presented to the House for adoption. The Committee's job is to investigate and inform the House as to whether the delegation of authority by the Parliament to enact rules, regulations, etc. has been correctly carried out. The Committee is to check whether:

- the order laid down before the House is in accordance with the general object of the Constitution or the Act in the wake of which it is made;
- the matter contained in it should have rather been dealt with in an Act of Parliament;
- it contains an imposition of tax;
- it bars jurisdiction of the Courts, directly or indirectly;
- it involves expenditure from the Consolidated Fund of India or the public revenues.
- it has made some strange or unforeseen use of the power conferred by the Constitution or the Act pursuant to which it is made;
- its laying before the Parliament or publication was unjustifiably delayed;
- it gives retrospective effect to any of the provisions with regard to which the Constitution or the Parent Act does not empower it; and
- its form or structures requires further detailing for some apparent reason

²¹ *J.K Industries Ltd. v. Union of India*, (2007) 13 SCC 673: (2007) 12 JT 529

(B) Procedural control/ executive control

Procedural control of Executive control – In this, the procedures for making rules are exclusively mentioned in the law and the executive must follow the procedures. The main three components under procedure control are to consult with the expert authority, the publication of the delegated rule or ordinance, and lastly the laying off the rules by the executive to the parliament. The main parameters for the executive control here are the intention of the legislature behind making the law, the main scheme of the act and its main intention and procedure, and the main language used in the law, main properties the language is trying to mention and lastly, it should be in the purview of the public welfare.

a. Prior publication of Rules and ordinances

Here the executive must publish the rules and regulations conferring from the parent law and it is also deemed to be necessary under Sec 23 of the General Clauses Act 1897, that the concerned authority shall publish in the public interest and if any objections regarding that are given it should also be taken in consideration by the authority and should be finalized and republish the same.

b. Prior consultation which may be affected by the delegated legislation

In India, there are no such general laws that state that consultation should be taken by the parties who are affected by the proposed rule and the process which was involved during law-making. Here, in some laws, it formerly states that firstly to consult and take the considerations for the same and after then frame the rules and regulations. In some statues, there are also provisions that state that no hearing or consultation can be claimed by anyone as a matter of right and in the sense of natural justice, when the administration is working in other functions or discharging other liabilities then the same cannot be challenged on the ground that the concept or principle of natural justice was not considered by the executive or parliament. Also. This Hon'ble Supreme Court of India stated that the principles of natural justice will not apply in the cases of legislative action or plenary action and here the proceeding or the process of hearing can't be carried out by the court.

III. CONCLUSION

Delegated legislation shows how some powers are transferred from the legislative to the executive so that it ensures fluid working of the legislation as the single entity can't perform every aspect of the state and central government on its own. Transferring of powers also comes up with the control mechanism, that it is not used in ultra-vires or in an abusive manner and

should not contravene with the enabling or parent act or the other act.

The three main control mechanism in India is Judicial control, Procedural Control, and Legislative control. Under the Parliamentary control, Parliament looks upon the working and functions of the executive and it is the inherent function given in constitution and it is controlled and looked upon the initial stage and direct stage.

Here at the initial stage when delegating power, it is looked upon by the parliament how much power should be delegated and secondly in the second stage after the rules which are prepared by the central government should be laid off before the parliament for further inspection.

Here in the case of judicial control that the rules so made by the executive are under the ambit of the law and do not violate any articles regarding fundamental rights and other necessary articles in the constitution of India. In the case of procedural control, procedures for making rules are exclusively mentioned in the law and it is mandatory for the executive to follow the procedures. The main three components under procedure control are to consult with the expert authority, the publication of the delegated rule or ordinance, and lastly the laying off the rules by the executive to the parliament.
