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Introduction to Delegated Legislation and its Judicial Control

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ABSTRACT

Delegated legislation, a mechanism through which legislative bodies delegate authority to administrative agencies or other governmental bodies to implement and administer laws, has become an indispensable tool in modern governance. While it offers flexibility and efficiency in responding to complex and evolving regulatory needs, it also raises concerns regarding accountability, democratic legitimacy, and the potential for abuse of power. This analytical study aims to explore the nature of delegated legislation, its significance in contemporary governance frameworks, and the mechanisms of judicial control established to ensure its legality and conformity with the principles of constitutionalism. Through a comprehensive review of legal literature, statutes, and judicial precedents, this study will examine the various forms of delegated legislation, ranging from subordinate regulations to executive orders, and assess the scope and limits of judicial oversight in different jurisdictions. By analyzing landmark cases and theoretical perspectives, this study seeks to provide insights into the evolving dynamics between legislative and judicial institutions in the context of delegated legislation, with a focus on balancing regulatory flexibility with the rule of law. The findings of this study aim to contribute to the scholarly discourse on administrative law and governance, offering policymakers and legal practitioners a nuanced understanding of the complexities surrounding delegated legislation and its judicial control.

I. INTRODUCTION

The subject of delegated legislation has been one of the most discussed subjects in legal theory due to its various effects. Scholars have consistently presented different and even conflicting views on the delegation of legislative power and have therefore taken different positions on the subject. Although delegated legislation has been a widespread practice and almost an accepted norm in modern times, there are conflicting views. Cooley, for example, sharply criticized the power of delegation. He said "One of the established principles of constitutional law is that that section cannot delegate to any other body or authority the power given to the parliament.

Wherever the sovereign power of the State has invested its power, there it must remain, and the

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constitutional authority must pass laws alone until the constitution itself is amended. The power in whose hands this high privilege is entrusted cannot absolve itself of responsibility by choosing other bodies to which the power is transferred, nor can it substitute the judgment, wisdom, and patriotism of any other body. those in which the people alone have thought fit to entrust that sovereign trust. He further emphasized that “no legislative body can delegate power to another department of government, or any other body of authority, either in general or in the state especially when making laws.” The reason lies in the existence of its powers. That high prerogative is entrusted to his wisdom, judgment, and patriotism, and not to any other person, and acts ultra vires when he undertakes to delegate the trust instead of exercising it." Although such positions raise the question of whether the right of chief legislators to delegate legislative power to inferior persons is the fact that it has been a common practice in all modern democracies, it is important to first understand what is meant by delegated legislation and legislation and then analyze its various aspects.

Administrative Legislation and Delegated Legislation refer to powers given by the legislature to an administrative body to issue rules, and regulations, such as orders on certain matters. It can be defined as the legislative power of the executive or administrative branch. This is called delegated legislation for short. It has also been described as "legislative outsourcing".

II. SUBORDINATE LEGISLATION

Delegated legislation, also known as subordinate legislation or secondary legislation, refers to the rules, regulations, and laws created by governmental bodies under the authority of primary legislation (laws enacted by the legislative branch of government). While primary legislation sets out the broad principles and framework of a law, delegated legislation fills in the details, providing specific guidance and rules necessary for the implementation of the law. This type of legislation is essential for the efficient functioning of government and the legal system, as it allows for flexibility, adaptability, and specialization in addressing complex and technical issues.

Salmond explains: “*Subordinate legislation is the legislation made by the authority other than the supreme authority in the State, in the exercise of the power delegated to it, by the supreme authority.*”

Salmond says that the existence and validity of subordinate legislation depends on some higher or superior power.

It follows that the jurisdiction that exercises the legislative power transferred to it by the legislature (subordinate legislation) is subject to the legislative power, and the competence of

the jurisdiction is limited by the basic rule based on which the transfer was made. Thus, the rules, regulations, orders, notices, regulations, etc. issued by the executive authority or other administrative body in the exercise of legislative power are called secondary legislation.

Delegated legislation encompasses a broad range of rules, regulations, orders, and directives made by government agencies, ministers, and other authorized bodies under the authority conferred upon them by primary legislation. This secondary form of legislation complements and supplements primary legislation by providing detailed rules and procedures necessary for the effective implementation and enforcement of laws. Delegated legislation is typically more specific and technical than primary legislation, as it addresses detailed matters that may require frequent updates and adjustments to remain relevant and effective.

III. SCOPE OF DELEGATED LEGISLATION

To avoid threats, the parliament strictly limits the scope of delegation, providing adequate safeguards, control, and appeals against executive orders and decisions. The powers transferred to the executive to change the provisions of the law by order must remain within the framework of the authorized law. The power to make such an amendment undoubtedly involves some discretion, but it is exercised in furtherance of the legislative policy of the Act and

- i) cannot override or
- ii) be inconsistent with the legislative policy of the Act or
- iii) change the essential features, identity, structure, or policy of the Act.

Articles 245 and 246 of the Constitution of India provide that Parliament and State legislatures exercise legislative power. Delegation of legislative power is considered inevitable and therefore not prohibited in the Constitution.

Additionally, Article 13 (3) (a) of the Constitution of India provides that the Act includes all ordinances, regulatory rules, regulations, notifications, etc., which are declared void as a violation of fundamental rights. In addition, the courts made several legal decisions in which they justified delegated legislation.

Commenting on the need for delegated legislation, Justice Krishna Iyer in *Arvinder Singh Vs. The State of Punjab* has rightly observed that the complexities of modern administration are so confusing and full of detail, urgency, difficulty, and need for flexibility that our great legislature may not begin when it is necessary to deal directly and comprehensively with legislative activities in their abundance, rise, and decay. Delegating part of the legislative power becomes essential for viability.

For example, Article 372 of the constitution empowers the President of India to make laws under the constitution and, if necessary, to make such adaptations and amendments (either by repeal or amendment) to bring them into conformity with the provisions of the constitution. . the constitution. The State Reorganization Act of 1956 and some other similar laws also contain such a provision. The modification of the statute made by the board is harmless and insignificant and does not affect the substance of the matter.

Delegated legislation encompasses a broad range of areas within governance, administration, and public policy:

Administrative Law: Delegated legislation is vital in shaping administrative law by outlining rules for government agencies, departments, and officials. These rules cover administrative procedures, decision-making processes, and citizen-government interactions.

Regulatory Frameworks: Delegated legislation is commonly used to establish regulations for specific industries or activities. Regulatory bodies create standards through delegated legislation to ensure compliance with laws and protect public welfare.

Social Policy: Delegated legislation is employed to implement social policies addressing various issues such as welfare benefits, housing, education, and healthcare.

IV. DELEGATED LEGISLATION - EXECUTIVE LEGISLATION

Delegated legislation can be distinguished from executive legislation. The first refers to legislation passed by bodies other than the parliament to which the legislature delegates its legislative power, while the latter refers to the legislative power that is given to the executive in the constitution.

It follows that legislation passed by the parliament is the executive power expressly given to it in the constitution. In the exercise of power is not delegated. legislation, but strictly speaking it is original legislation.

Delegated legislation refers to legislation by authorities other than parliament, where the former acts under express delegated authority and the latter under a mandate. Authority is seen as a good basis for administrative efficiency and does not in itself constitute a surrender of power when it is restored to appropriate limits. The delegation must not be without a leader and supervision. Parliament and the State Legislatures cannot abdicate the legislative power in the essential parts of it which they have to exercise. Only non-essential legislative functions can be delegated, and the disputed issue is always on the boundary between essential and non-essential legislative functions. Basic legislative duties include drafting a bill. The role of the parliament

is to formulate a legislative policy and to delegate the formulation of the details of the implementation of that policy. Discretion in legislative policy making is a prerogative of the legislature and cannot be delegated to the executive. Discretion in the law regarding its extension to make announcements and changes and to amend or cancel existing laws requires the assumption that important functions of the legislator cannot be delegated, they cannot be precisely defined, and each case must be considered in its legislation. Halsbury Law of England explains that when a legislative instrument is made by a body other than the parliament, it is called delegated legislation. Simply put, delegated legislation refers to any legislation that takes place outside of parliament. It is usually expressed in rules, regulations, orders, statutes, manuals, plans, notices, etc.

Sure, here's a paraphrased version of the comparison between delegated legislation and executive legislation without any potential plagiarism:

Delegated legislation and executive legislation are distinct forms of law-making, each with unique characteristics:

1. Nature

Delegated Legislation: This involves the delegation of law-making authority by the legislative body to other entities, typically government agencies, to create detailed regulations under existing laws.

Executive Legislation: In contrast, executive legislation refers to laws or regulations directly issued by the executive branch without legislative approval, often through executive orders or decrees.

2. Authority

Delegated Legislation: It derives its authority from enabling statutes passed by the legislative body.

Executive Legislation: Its authority originates from the inherent powers of the executive branch to enforce laws and manage government affairs.

3. Scope

Delegated Legislation: It focuses on creating specific rules and procedures to implement broader legislative policies.

Executive Legislation: This type of legislation tends to address immediate concerns or administrative matters within the executive branch.

4. Accountability

Delegated Legislation: Subject to parliamentary oversight, it can be challenged or amended by the legislative body.

Executive Legislation: While it lacks direct legislative approval, it may be subject to judicial review to ensure compliance with the law.

The concept of delegated legislation, as outlined in a 1973 Supreme Court decision, arises from the practical requirements and functional demands of a contemporary welfare state. According to our Constitution, legislative authority is vested in the elected representatives of the people. Delegated legislation allows the Executive to create subordinate laws within defined boundaries, ensuring that legislative power is exercised in the name of the people and on their behalf, through their chosen representatives.

V. TYPES OF DELEGATION OF LEGISLATIVE POWER IN INDIA

Delegated legislation can be categorized based on several factors:

1. TITLE-BASED CLASSIFICATION: This classification depends on the titles given to different legislative provisions authorized by an Act. These provisions can take various forms such as regulations, rules, by-laws, orders, or directions.:

Title-based classification is a foundational concept in legal systems worldwide, vital for understanding the organization and hierarchy of laws within a jurisdiction. This system categorizes laws based on their hierarchical status and authority. Here's a comprehensive explanation:

- a. **Primary Legislation:** This represents the highest level of law within a legal system, often referred to as statutes, acts, or constitutions. Primary legislation is typically enacted by the legislative body of a country or state, such as a parliament or congress. It establishes fundamental principles and sets the framework for governance. Primary legislation addresses broad legal issues and typically requires a formal legislative process for enactment, including debates, voting, and approval by the designated authority. Examples include the United States Constitution, federal statutes like the Civil Rights Act of 1964, and state-level acts such as the California Education Code.
- b. **Secondary Legislation:** Also known as subordinate legislation or delegated legislation, this derives its authority from primary legislation. It is created by government agencies, ministers, or other executive bodies authorized by primary legislation to elaborate on the broader policy objectives set out in the primary laws. Secondary legislation deals

with specific administrative and technical matters, such as regulations, orders, and bylaws. Unlike primary legislation, secondary legislation isn't enacted through the same formal legislative process but is instead delegated by the legislature to executive authorities. Examples include environmental regulations issued by the Environmental Protection Agency (EPA) in the United States, building codes set by local municipalities, and traffic rules established by transportation departments.

- c. Tertiary Legislation: Some legal systems also recognize tertiary legislation, which includes administrative guidelines, circulars, or policy documents issued by government agencies or departments. While not legally binding like primary or secondary legislation, tertiary legislation provides guidance on interpreting and implementing laws and regulations. It ensures consistency and uniformity in the application of legal principles and administrative procedures. Examples may include official guidance on tax regulations issued by revenue authorities, procedural manuals for administrative hearings, or directives on public procurement procedures.

Title-based classification is crucial for maintaining order and coherence within a legal system, clarifying the sources of law, and delineating the respective roles and powers of legislative and executive authorities. It enables legal professionals, policymakers, and citizens to navigate the complexities of the law and understand the legal framework governing their rights and obligations. Additionally, title-based classification facilitates the identification of legal norms applicable to specific situations and ensures accountability and compliance with legal requirements.

2. DISCRETION-BASED CLASSIFICATION (CONDITIONAL LEGISLATION): This classification is based on the discretion vested in the rule-making authority. It divides administrative rule-making into subordinate and contingent or conditional legislation.

Discretion-based classification in delegated legislation pertains to the extent of authority vested in administrative bodies when formulating regulations under the mandate of primary legislation. Delegated legislation, also known as subordinate or secondary legislation, empowers government agencies, ministers, or other authorized entities to elaborate on the broader policy objectives outlined in primary laws.

Here's how discretion-based classification applies to delegated legislation:

- a. Mandatory Delegated Rules: Some primary legislation may impose specific criteria or guidelines that restrict the discretion of administrative bodies in formulating delegated legislation. These rules function similarly to mandatory directives, setting forth clear

requirements or standards that must be adhered to in the exercise of delegated powers. For instance, primary legislation might delineate the scope, objectives, and procedural parameters for delegated legislation, thereby limiting interpretive or implementation discretion by the executive.

- b. **Discretionary Delegated Rules:** Conversely, many delegated legislative powers afford significant discretion to administrative bodies, enabling them to adapt regulations to specific circumstances or evolving contexts. Discretionary delegated rules offer flexibility in interpretation and application, allowing administrative bodies to address complex issues within their areas of expertise. This discretion often involves the exercise of judgment informed by policy considerations, technical expertise, or public interest concerns. For example, primary legislation might authorize a regulatory agency to establish detailed standards for environmental conservation, granting the agency discretion to consider scientific evidence, economic factors, and stakeholder perspectives in crafting regulations.
- c. **Balancing Delegated Rules:** Certain delegated legislative powers necessitate administrative bodies to reconcile competing interests or policy objectives when formulating regulations. These rules require decision-makers to balance divergent considerations within a framework of legal principles or statutory goals. Decision-makers must weigh various factors to achieve a reasonable equilibrium between competing interests. For example, primary legislation may empower a government department to establish safety standards for consumer products, mandating the department to balance consumer protection imperatives with industry innovation and economic competitiveness.

Comprehending discretion-based classification in delegated legislation is vital for evaluating the breadth of authority delegated to administrative bodies, assessing the legitimacy of regulatory decisions, and ensuring accountability in delegated powers' exercise. It enables stakeholders to discern the latitude or constraints in delegated rules and engage effectively in the regulatory process by providing feedback on policy priorities and implementation strategies. Additionally, discretion-based classification serves to mitigate potential abuses of delegated authority, fostering transparency and coherence in regulatory decision-making.

3. PURPOSE-BASED CLASSIFICATION: This classification considers the different purposes served by delegated legislation. Examples include Enabling Acts, Alteration Acts,

Taxing Acts, Supplementary Acts, Classifying and Fixing Standard Acts, and Penalty for Violation Acts.

Purpose-based classification for delegated legislation involves grouping regulations based on their underlying objectives or functions. Unlike discretion-based classification, which focuses on the extent of authority granted to administrative bodies, purpose-based classification examines the goals or purposes of the regulations. Here's how purpose-based classification works for delegated legislation:

A. Regulatory Purposes:

- **Protective Regulations:** These aim to ensure public health, safety, or welfare by establishing standards, restrictions, or risk mitigation measures. Examples include regulations for food safety, workplace safety, environmental protection, and consumer rights.

- **Economic Regulations:** These seek to foster economic stability, fairness, or efficiency by regulating markets, industries, or economic activities. Examples include banking regulations, competition laws, trade policies, and consumer protection measures.

- **Social Regulations:** These address social issues or inequalities by promoting equality, inclusion, or social justice. Examples include regulations related to employment rights, anti-discrimination measures, housing policies, and education standards.

B. Administrative Purposes:

- **Procedural Regulations:** These establish procedures, methods, or requirements for administrative actions or processes. Examples include regulations governing administrative hearings, rulemaking procedures, licensing processes, and administrative appeals.

- **Organizational Regulations:** These govern the internal operations, structures, or functions of government agencies or departments. Examples include regulations concerning staffing, budgeting, procurement, and record-keeping.

- **Coordination Regulations:** These facilitate coordination, cooperation, or collaboration among government agencies, levels of government, or stakeholders. Examples include regulations establishing interagency task forces, information-sharing protocols, or joint initiatives.

C. Policy Objectives:

- **Preventive Regulations:** These aim to prevent harm, misconduct, or undesirable outcomes by imposing preventive measures or requirements. Examples include regulations requiring safety inspections, background checks, or risk assessments.

- Remedial Regulations: These address existing problems, injustices, or deficiencies by remedying past harms or implementing corrective measures. Examples include regulations providing compensation for victims of fraud, discrimination, or environmental damage.

- Developmental Regulations: These promote progress, innovation, or growth by fostering economic development, technological advancement, or social improvement. Examples include regulations incentivizing research and development, entrepreneurship, or infrastructure investment.

Purpose-based classification helps stakeholders understand the intended objectives and impacts of regulations, enabling them to assess effectiveness, relevance, and coherence. It supports targeted interventions, policy evaluations, and regulatory reforms by identifying areas where regulations may be lacking, overlapping, or conflicting in their purposes. Additionally, purpose-based classification enhances transparency and accountability by aligning regulations with broader policy goals and public interests.

4. AUTHORITY-BASED CLASSIFICATION (SUB-DELEGATION): This classification is based on the position of the authority making the rules. It includes sub-delegated legislation, where the rule-making authority delegates its power to issue rules to itself or to some other subordinate authority.

Authority-based classification, especially in the context of sub-delegation, involves organizing delegated legislation according to the extent to which administrative bodies are permitted to further delegate their legislative powers. Sub-delegation occurs when an entity with the authority to create regulations under primary legislation delegates this authority to another entity. Here's a detailed breakdown:

a. Non-Delegable Authority:

- Some primary legislation explicitly forbids sub-delegation, ensuring that the entity entrusted with regulatory authority cannot delegate it to others. This preserves accountability, ensuring that regulatory decisions are made by bodies directly accountable to the legislature or the public. It also maintains clarity in the regulatory process.

b. Limited Sub-Delegation:

- Primary legislation may allow limited sub-delegation, permitting the initial administrative body to delegate certain administrative functions or tasks related to regulation within specified conditions or limits. This approach enhances efficiency while retaining oversight and control over the regulatory process.

c. Unrestricted Sub-Delegation:

- In some instances, primary legislation grants unrestricted sub-delegation authority, enabling the initial administrative body to delegate its entire regulatory authority without constraints. This can enhance flexibility in regulatory decision-making but raises concerns about accountability and coordination.

Authority-based classification in sub-delegation clarifies the scope of delegated powers, the discretion granted to administrative bodies, and mechanisms for accountability. It helps stakeholders understand regulatory governance dynamics, identify potential challenges, and assess regulatory frameworks' effectiveness. Additionally, it facilitates the design of regulatory structures that balance flexibility and accountability, ensuring that regulatory decisions serve the public interest while maintaining legitimacy and transparency.

5. NATURE-BASED CLASSIFICATION (EXCEPTIONAL DELEGATION): This classification is based on the nature and extent of delegation. It distinguishes between normal delegation, where the limits of delegation are clearly defined, and exceptional delegation, which includes instances such as power to legislate on matters of principle or to amend Acts of Parliament. Exceptional delegation is sometimes referred to as the Henry VIII clause, named after the king of England in the 16th Century, who used such powers extensively.

Nature-based classification, particularly in the context of Exceptional Delegation, involves organizing delegated legislation according to the circumstances surrounding the delegation of legislative authority. Exceptional Delegation refers to instances where the legislature delegates powers to the executive branch in extraordinary situations. Here's a breakdown:

a. Emergency or Crisis Situations:

- Exceptional Delegation may occur during emergencies like natural disasters or public health crises. Legislatures may grant temporary or extraordinary powers to the executive to address urgent needs. Delegated legislation under this category is typically time-limited and aimed at resolving the crisis.

b. Complex or Technical Matters:

- Sometimes, legislatures delegate authority to the executive for dealing with complex or technical issues requiring specialized expertise. This form of Exceptional Delegation recognizes that certain policy areas benefit from administrative expertise. Delegated legislation here may involve technical standards, scientific assessments, or industry-specific regulations.

c. International Obligations:

- Exceptional Delegation can arise to implement international agreements or treaties. Delegated legislation ensures compliance with international obligations or facilitates cooperation with other nations. It often involves aligning domestic laws with international standards.

d. Transitional Periods:

- Exceptional Delegation may be used during transitional periods such as when a new government is established. Legislatures may delegate authority to maintain stability or governance. Delegated legislation during transitions focuses on interim measures until permanent structures are in place.

e. Unforeseen Circumstances:

- Exceptional Delegation may respond to unforeseen situations requiring immediate action outside existing legislative provisions. Delegated legislation here is tailored to address the specific issue and may include provisions for legislative review.

Nature-based classification of Exceptional Delegation distinguishes between different circumstances surrounding the delegation of legislative powers. It helps stakeholders understand why legislative authority is delegated and assess the legitimacy of delegated legislation. This classification provides clarity and transparency in the regulatory process, ensuring accountability and adherence to democratic principles even in extraordinary situations.

An example of exceptional delegation is found in Article 372(2) of the Indian Constitution, where the President is delegated the power to adapt, amend, and repeal any law to bring it in line with the Constitution, and this power is immune from judicial scrutiny.

VI. ESSENTIAL CHARACTERISTICS OF DELEGATED LEGISLATION

Derived Authority: Delegated legislation derives its authority from an enabling Act of Parliament. The primary legislation grants powers to a specific authority or body to create laws within defined limits.

Supplemental Legislation: It supplements the provisions of primary legislation by providing detailed regulations, rules, or orders necessary for the implementation and administration of the law.

Flexibility: Delegated legislation allows for flexibility in adapting laws to changing circumstances without the need for frequent amendments to primary legislation. This flexibility is particularly useful in areas where technical or detailed provisions are required.

Expertise: Delegated legislation often allows for technical matters to be addressed by relevant experts or specialized bodies, ensuring that the regulations are formulated with appropriate expertise.

Speed and Efficiency: Delegated legislation can be enacted more quickly than primary legislation, making it an efficient tool for responding to urgent or rapidly changing situations.

Control and Oversight: While delegated legislation provides flexibility, it is subject to certain controls and oversight mechanisms. These may include parliamentary scrutiny, judicial review, or specific procedures outlined in the enabling Act to ensure that the delegated powers are not abused.

Limited Scope: Delegated legislation must operate within the confines of the powers granted by the enabling Act. It cannot go beyond what is authorized by the primary legislation.

Subordinate Status: Delegated legislation is subordinate to primary legislation. If there is a conflict between the two, primary legislation prevails.

Various Forms: Delegated legislation can take various forms, including statutory instruments, orders in council, regulations, by-laws, and administrative rules, depending on the nature of the authority and the subject matter.

Revocability and Amendment: Delegated legislation can typically be revoked or amended by the same authority that created it, subject to any procedural requirements or limitations specified in the enabling Act.

VII. THE NEED FOR DELEGATED LEGISLATION

Delegated legislation is necessary for several reasons:

Detailed Implementation: Often, primary legislation provides broad principles or frameworks, leaving detailed implementation to delegated legislation. This allows for a more precise and practical application of laws to specific circumstances.

Expertise and Specialization: Delegated legislation enables relevant authorities or expert bodies to address technical, complex, or specialized matters within their respective domains. This ensures that regulations are formulated with the necessary expertise and understanding of the subject matter.

Flexibility and Adaptability: Delegated legislation provides flexibility to respond promptly to changing circumstances, emerging issues, or advancements in technology without the need for lengthy and cumbersome parliamentary procedures. This agility is essential in areas where laws

need to keep pace with evolving realities.

Efficiency and Timeliness: Delegated legislation can be enacted more quickly than primary legislation, allowing for timely responses to urgent situations or emerging needs. This efficiency is particularly crucial in areas such as public health, emergency management, and economic regulation.

Administrative Detailing: Delegated legislation fills in administrative details necessary for the effective functioning of government agencies and departments. It specifies procedures, requirements, and standards that facilitate the smooth operation of public services and regulatory processes.

Consistency and Uniformity: Delegated legislation helps ensure consistency and uniformity in the application of laws across different regions or sectors. It allows for the creation of standardized regulations that promote fairness and equity in governance and enforcement.

Parliamentary Scrutiny and Control: Although delegated legislation grants powers to executive bodies, it remains subject to parliamentary scrutiny and control. This ensures accountability and oversight, preventing the misuse or abuse of delegated powers.

Special Circumstances: Delegated legislation is useful in addressing special circumstances or emergencies where prompt action is necessary. It provides a legal mechanism for temporary measures or adjustments to existing laws without the need for extensive legislative processes.

Cost-effectiveness: Delegated legislation can be a cost-effective way to regulate complex or technical matters, as it allows for detailed regulations to be developed by specialized bodies or agencies without the need for extensive parliamentary time and resources.

Democratic Governance: Delegated legislation contributes to democratic governance by facilitating public participation and consultation in the rule-making process. While the primary legislation is enacted by elected representatives, delegated legislation often involves input from stakeholders and affected parties, enhancing transparency and accountability.

VIII. DELEGATED LEGISLATION AS DISTINGUISHED FROM ADMINISTRATIVE POWER

Delegated legislation and administrative power are separate entities, although they may intersect in practice.

1. Delegated Legislation:

- Delegated legislation occurs when a legislative body entrusts law-making authority to other entities, often government agencies.

- It involves crafting detailed rules and regulations within the parameters of existing laws to address specific issues not fully covered by primary legislation.
- The authority for delegated legislation stems from statutes enacted by the legislative body, and it remains subject to oversight by the legislative branch.

2. Administrative Power:

- Administrative power refers to the authority vested in government agencies and officials to execute and manage laws, policies, and programs.
 - This authority encompasses various functions such as decision-making, enforcing regulations, issuing licenses, settling disputes, and delivering public services.
 - Administrative power is inherent to the executive branch of government and is essential for the efficient operation of government and the provision of public services.

While there can be overlap between delegated legislation and administrative power, especially as delegated legislation often involves administrative functions, the distinction lies in their origins and the nature of their activities:

- Delegated legislation stems from the legislative branch, granting authority to create specific rules and regulations within the framework of existing laws.
- Administrative power, on the other hand, is inherent to the executive branch and encompasses a broader array of functions related to governance and public administration.

In essence, while both delegated legislation and administrative power are integral to modern governance, they serve distinct purposes and operate within different spheres of authority and responsibility.

Indian courts have so far held that the right to fix prices is administrative. But in the case of *Union of India v. Cynamide India Ltd.* price fixing was held to be a legislative act. Powers to set tax rates are treated as legislative. Enlargement of city commissions is considered a legislative task.

IX. MERITS OF DELEGATED LEGISLATION

Delegated legislation offers numerous advantages that contribute to its widespread use and acceptance in contemporary governance. Here are some of its merits:

1. **Specialization and Expertise:** Delegated legislation empowers specialized government agencies or bodies to develop detailed rules and regulations within their areas of expertise. This ensures regulations are informed by expert knowledge and tailored to specific industries or

issues.

2. **Flexibility and Responsiveness:** Unlike the protracted process of passing primary legislation, delegated legislation enables swift responses to evolving circumstances, emerging challenges, or technological advancements. This agility is vital in addressing dynamic situations and adapting to changing environments.

3. **Efficiency in Law-making:** Delegated legislation streamlines the legislative process by delegating detailed rule-making authority to administrative bodies. This relieves the burden on the legislature, allowing it to concentrate on broader policy matters while entrusting implementation details to specialized entities.

4. **Precision and Specificity in Regulations:** Delegated legislation facilitates the creation of precise and specific regulations tailored to address intricate issues. By providing clear guidelines and procedures, it enhances predictability and consistency in regulatory compliance for stakeholders.

5. **Facilitation of Policy Implementation:** Delegated legislation translates overarching policy goals into practical rules and regulations. It establishes the necessary framework for implementing government policies at the operational level, ensuring uniformity and coherence in policy execution across various sectors.

6. **Adaptability to Changing Circumstances:** Delegated legislation empowers governments to adjust to evolving circumstances, such as economic shifts, technological progress, or emerging challenges. It enables timely modifications to regulations to tackle new issues without the need for primary legislative amendments.

7. **Alignment with International Standards:** Delegated legislation facilitates the adoption and enforcement of international standards, agreements, and obligations. It allows governments to harmonize their regulatory frameworks with global best practices, promoting international collaboration, trade, and standardization.

8. **Parliamentary Oversight and Accountability:** Despite being developed by administrative bodies, delegated legislation remains subject to parliamentary scrutiny and oversight. This ensures transparency and accountability in the legislative process, as delegated regulations are subject to review, modification, or annulment by the legislative branch if necessary.

X. DEMERITS OF DELEGATED LEGISLATION

1. **Democratic deficit:** One of the primary criticisms of delegated legislation is that it undermines democratic principles. It allows unelected bodies or individuals to make laws, which can be seen as undemocratic since these entities aren't directly accountable to the public.

2. **Lack of transparency:** Delegated legislation often lacks the same level of transparency as laws passed through the regular legislative process. This can make it difficult for the public to understand and scrutinize the laws that affect them.

3. **Potential for abuse:** Delegated legislation grants significant power to executive bodies, which can be abused or used for political gain. There's a risk that these bodies may create laws that serve their own interests or the interests of particular groups, rather than the common good.

4. **Reduced parliamentary scrutiny:** Delegated legislation is typically subject to less scrutiny than primary legislation passed by Parliament. This can result in laws being passed without adequate debate or consideration of their implications.

5. **Complexity and inconsistency:** The use of delegated legislation can lead to a complex legal framework with inconsistent regulations. Different delegated authorities may create conflicting or overlapping rules, creating confusion and uncertainty for both individuals and businesses.

6. **Lack of public input:** Delegated legislation often involves limited public consultation compared to the legislative process. This can result in laws being created without sufficient input from those who will be affected by them.

7. **Difficulty in amendment:** Delegated legislation can be difficult to amend once enacted, particularly if the authority responsible for the legislation is reluctant to make changes or if the process for amending the legislation is cumbersome.

8. **Potential for delegation creep:** There's a risk that the power to create delegated legislation may be expanded over time, leading to a situation where significant portions of the law are determined by unelected bodies rather than through the democratic process.

XI. SOME INSTANCES OF DELEGATED LEGISLATION

1. **Advocates Act, 1961:** The preamble to the Act provides for the maintenance of a high standard of professional ethics and professionalism. The Bara Council, which is the governing body, makes rules for this.

2. The Law on Export and Import, which has only 8 sections, contains the rules for export and import. According to the law, the central government has the right to make the necessary rules to achieve the purpose of the law.

3. Essential Commodities Act, 1955: The Act regulates the maintenance and supply of essential commodities like sugar, rice, wheat, etc. According to the law, the central government has the right to implement rules and regulations for the law.

4. Medical Council of India Act: The preamble of the Act stipulates that high standards and ethics of the medical profession shall be maintained. The Medical Council of India will make rules in this regard.

5. Right to Information Act, 2005: Section 27 of the Act empowers the appropriate government to issue rules to implement the provisions of the Act.

However, the acting authority can issue any other rule if these rules are not valid. delegated by the parliament, they can be in the constitution itself. Article 77 of the Constitution empowers the president to make rules to facilitate government affairs. Even the executive powers of the President under Article 123 and the powers of the Governor under Article 213 cannot be treated as delegated legislation because they are legislative powers vested in them.
