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Parliamentary Control over Legislation with Special Focus on Parliamentary Committee on Subordinate Legislation

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ABSTRACT

India follows the theory of separation of powers, where a separate set of responsibilities and duties has been cast upon the State's organ. This theory is originally followed to bring out the maximum potential of the performer and avoid overlapping of work. Each organ has its own crucial role; with such an extensive amount of workload, there comes the need to delegate the work, which assists in improving the pace at which the work is performed and makes sure that there is no lacuna in the performance. This paper seeks to evaluate the extent of powers of the Parliament over the framing of laws of the land and the safeguards which they necessarily have to keep in mind while doing so. It also throws light upon the importance of the role of the Parliamentary Committee on Subordinate Legislation while accessing the viability and functionality of the same.

I. INTRODUCTION

The term subordinate legislation can be defined in 2 parts, firstly the exercise of the power of legislation by a subordinate authority and the subsidiary rules so made by such subsidiaries exercising power conferred. The secondary legislation is also known as 'delegated legislation' as the power to make the rules are being delegated to subordinate authorities. Henceforth, the principle of subordinate legislation includes all the rules, regulations, order, and by-laws framed by the entrusted authority.

In India, many statutes confer various authorities the power to frame rules guiding them. Examples can be The Minimum Wages Act, 1948, which authorizes the central government to add any employment in schedule 1, The Essential Commodities Act, 1955, where the power to classify items in the list has been conferred to Central Government. Similarly, the Payment of Bonus Act 1965, The Defence of India Act 1962, and The Income Tax Act authorizes the appropriate authorities to frame rules and pass orders.

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II. CONTROL OVER LEGISLATION AND DELEGATION OF POWERS

(A) Requirement of control

Now it has become a general rule to pass the rule-making authority to the subordinate. But such delegation can be done only till the permissible limit. On such delegation, there is always a risk of abuse of such bestowed power by the executive. If the country is to continue seeking the advantages of subordinate legislation, necessary safeguards are required to prevent the abuse². The control can be introduced at two different levels wherein the initial point can be the source of subordinate legislation itself, i.e., the safeguard must be there when the legislature confers the powers to the executive. And secondly, the safeguard must be established to keep a check over the misuse of conferred authority to legislate. The control over the subordinate legislation can be divided into 3 major heads viz., judicial control, legislative control, and other controls, which includes the control by the parliament through committees³.

(B) Importance of subordinate legislation

Framing of laws is not an easy task as it might seem; it requires specialized skills and is a technical affair. Thus, it makes it almost impossible for the legislature to pinpoint every detail in the framed laws. This is the part where the need for delegation of work arises. In the matter of *Gwalior Rayon Mills Mfg. (Wing.) Co. Ltd.v.Asstt. Commissioner of SalesTaxand Others*⁴ the Hon'ble Supreme Court has observed that one of the major limitations of the legislature is that because of time constraints, it is unable to go into the details of the matter; thus, subordinate legislations assists the state by division of work while keeping in view the pragmatic needs of a modern welfare state.

III. PARLIAMENTARY CONTROL OVER THE LEGISLATION

Parliament is under complete freedom to delegate non essential law-making functions to the /subordinates. In case the powers are delegated, a duty rest upon the parliament to see that such power is being exercised properly and there is a check over the misuse of the same⁵.

In a parliamentary democracy, where we follow the separation of powers, it is the primary function of the legislature to legislate, and in case if it seeks to delegate its legislative powers to the subordinate or executive for some well-explained reasons, then such right to delegate is

² Delhi Laws Act, 1912 in Re, AIR 1951 SC 332.

³ Committee on Ministers' Powers Report, 1932, P. 54.

⁴ *Gwalior Rayon Mills Mfg. (Wing.) Co. Ltd.v.Asstt. Commissioner of SalesTaxand Others*, AIR 1974 SC 1660.

⁵ *Atlas Cycle Industries Ltd. v. State of Haryana*, (1979) 2 SCC 196.

coupled with the obligation to manage how the agent exercise such legislative authority⁶.

The very objective of parliamentary control is to keep a check over the subordinate rule-making authorities and, at the same time, to provide the parliament with an opportunity to criticize them in case there is an abuse of authority on the part of the delegated authority⁷. There are two modes of exercising this control: the process of lying on the Table and secondly via constituting the parliamentary scrutiny committee.

(A) Laying on Table

There is a multi-fold purpose of laying the action taking by the executive in the parliamentary table. The first is the informative objective to inform the legislature as to what rules, order, and by-laws are being passed by the executive authority in the exercise of delegated legislation. The second and important purpose being providing the legislature with an opportunity to challenge the rules so made by the executive and struck down the same if they are ultra vires⁸. Hence it is a safety cushion with the parliament to exercise supervision, control, and check over the executive law-making power. Via this 'laying before parliament,' the legislature and the executive operate in a close-knitted structure⁹ where the latter being accountable to the former. In 'Laying' itself, there are multiple options that are exercised by the parliament. The first being merely laying under which rules once framed must once be laid and as a procedural requirement to inform the parliament. Second is the 'negative resolution' where the laying is with immediate effect but subject to annulment by the parliament. Second form of 'negative resolution' is lying but subject to the condition that rules should not be operative unless a specified time expires. The contrary to the above is 'positive resolution,' where stringent control is exercised over the draft rules. The rules do not become operative until the parliament passes an affirmative resolution. In cases where prompt action is required, but there is a need to have strict supervision, the procedure of laying with immediate effect but requiring affirmative resolution as a condition for continuance is followed¹⁰.

IV. A CHECK ON DELEGATED LEGISLATION

(A) Parliamentary Committee on Subordinate Legislation

The Committee on Subordinate Legislation is one of the most influential mechanisms to maintain its control over delegated legislation. Even when the delegation of legislation is done,

⁶ M.P. Jain, *Treatise on Administrative Law*, 1996 vol. 1, p. 136.

⁷ *Lohia Machines Ltd. v. Union of India*, (1985) 2 SCC 197.

⁸ *State of MP v. Mahalaxmi Fabric Mills*, 1995 Supp (1) SCC 692.

⁹ *N.K. Papiiah v. Excise Commissioner*, (1975) 1 SCC 492.

¹⁰ *Select Committee on Delegated Legislation, Delegated Legislation in India*, ILI 1964 pp. 166-169.

it does not mean that complete power is given through the subordinate legislation. It is done in a controlled manner and is regulated by the parliamentary committee on subordinate legislation. This committee works extensively to check whether the delegated powers are being utilized in the best possible manner. It authorizes the working of subordinate legislation and ensures that the delegation and its related applications have been made in a manner authorized by law. Not only this, one of the prime functions of the committee is to keep a check on delegated authority so that it does not authorize an act for which it does not have any authorization or power. The areas that exclusively belong to the legislature are not to be taken over by the subordinate legislation. It has no authority to even act in the capacity of delegated authority in such places.¹¹The objective of these committees is to critically analyze the subordinate legislation and report the same to the respective houses so that it could be voted. They act as watchdogs that bark and arouse their master from slumber when they find that some invasion on the premises has taken place¹².

3.2 Parliamentary committee in Rajya Sabha

The Parliamentary committee formed to assist the subordinate delegation in Rajya Sabha has numerous functions like scrutiny and regulations. It is quasi-judicial in nature, which would ensure that politics is not done within the committee and they can function independently without any influence from political parties. This committee acts as a cord where balance can be struck between the executive and the legislative branch of the government. This committee would have to ensure that the delegation power is exercised in a manner prescribed by statutes or rules and regulations formulated by the legislative bodies. It is the duty of the committee to keep a check on the implementation of rules or acts of subordinate legislation initiated by it are being done effectively or not. It is the duty of this committee to ensure that the orders issued to align with the Constitution of India and the authority recognized by it.

V. SUGGESTIONS AND CONCLUSION

In laying itself, multiple approaches can be followed. Hence there is no uniformity which might get confusing at times. The laying procedure must not be followed in every draft rule. This can be done in two steps; first, the parliament, before delegating, must ensure that they are not delegating excessive authority to subordinates. Secondly, the laying should be followed in those cases where there is a question of excessive authority. Laying of all rules means excessive

¹¹ Ramesh Narain Mathur, Legislative control of delegated legislation a survey, *The Indian Journal of Political Science*, Vol. 21, No. 1, Page 35.

¹² Ibid at p. 201.

control over the subordinates, which defeats the purpose of delegated legislation.

The next thing which can be changed is that there is no time limit fixed for laying before the parliament. Hence the time limit should be fixed, or the phrase "as soon as possible" must be added. The period fixed can be 30 days - 45 days from publication or any appropriate date. And lastly, the unnecessary bifurcation of parliament's power to amend some and not amending some rules must be done away with. The uniform authority to modify in cases of a patent or latent defects must be conferred upon parliament in all cases.

While delegating the authority, the legislature must set some guidelines so that the subordinate does not transgress the authority. Some guidelines can be that the rules must not be discriminatory in any way if the time period is specified for the rules, there should not be an inordinate delay in framing the same if any defect arises the authority will lie with the parliament and the administration should not be given the power to interpret own rules and lastly once the rules are made it must be given wide publicity so that the objections can be timely dealt. Strict adherence to such guidelines will surely help the parliament effectively keep a check over the delegated legislation. If the subordinates frame any rules, it will be *intra vires* the parent act.

VI. REFERENCES

Cases referred

- Atlas Cycle Industries Ltd. v. State of Haryana, (1979) 2 SCC 196
- Delhi Laws Act, 1912 in Re, AIR 1951 SC 332
- Gwalior Rayon Mills Mfg. (Wing.) Co. Ltd.v.Asstt. Commissioner of SalesTaxand Others, AIR 1974 SC 1660
- Lohia Machines Ltd. v. Union of India, (1985) 2 SCC 197
- N.K. Papiiah v. Excise Commissioner, (1975) 1 SCC 492
- State of MP v. Mahalaxmi Fabric Mills, 1995 Supp (1) SCC 692

Books Referred

- M.P. Jain, Treatise on Administrative Law, 1996 vol. 1

Reports referred

- Committee on Ministers' Powers Report, 1932, P. 54
- Select Committee on Delegated Legislation, Delegated Legislation in India, ILI 1964

Articles referred

- Ramesh Narain Mathur, Legislative control of delegated legislation a survey, *The Indian Journal of Political Science*, Vol. 21, No. 1
