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DELEGATED LEGISLATION IN INDIA: **A BROADER OUTLOOK**

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ABSTRACT

Delegated Legislation serves as a justification for the legislators, a protection for the administrators, and a challenge for constitutional purists. The idea of delegated legislation, to put it simply, is to give authorities at a lower level the authority to act and carry out particular legislative duties. Its importance and need to have delegated legislation in India had emerged significantly through the landmark Supreme Court judgements. Although, there has been many criticisms on the part of such legislation but there has always been a scope for general acceptance, checks and control and guidelines in case of any misuse of such power by the administrative authorities.

I. INTRODUCTION

A nation's operation is entrusted to the three organs, primarily the legislative, executive, and judicial branches. For the country to run well, these three organs cooperate with one another. The primary purpose of legislation is to create the different laws that govern the nation and the conduct of the citizens of the territory or those who may otherwise have an impact on the nation. But such purpose majorly becomes difficult for a country like India to hold or go through such processes as smoothly as it should because the needs and wants of such a humongous nation often stands difficult for the Legislature to understand. So, to overcome such situations, the concept of delegated legislation comes into the picture.

The term "delegated legislation" encompasses many different confusions. It serves as a justification for the legislators, a protection for the administrators, and a challenge for constitutional purists. The idea of delegated legislation, to put it simply, is to give authorities at a lower level the authority to act

and carry out particular legislative duties. Other names for the idea of delegated legislation include secondary, subsidiary, or subordinate legislation. To lessen the workload on the legislative body and streamline the process, the executive entities are given the authority to carry out legislative tasks under this framework. This is a procedure whereby the executive body is given the authority to enact laws to address the demands of the general populace who reside in their territory for basic necessities. In the 20th century, the importance of delegated legislation has invariably witnessed growth along with some criticisms. This paper specifically deals with the overall sphere of delegated legislation.

II. HISTORY TO WITNESS ITS GROWTH

The Charter Act of 1833, when the East India Company was regaining political influence in India, provides the historical context for the delegation of power. The sole official body given administrative authority by the Charter Act of 1833 was the Governor-General-in-Cabinet. He had the power to enact laws and regulations that applied to everyone, regardless of nationality, and which allowed for the revocation, correction, or modification of any laws or regulations. The Government of India Act, 1935, which had a significant delegation strategy, was passed in 1935. In India, the argument for the assignment of forces and nomination of enactment was seen as inevitable until the report of the Committee of Ministers' Powers was submitted and confirmed.

However, our Constitution was based on the division of powers; a complete division of powers was unworkable; as a result, it maintained the sanctity of the tenet in the most modern sense. The assignment of forces is not prohibited under the Indian Constitution. However, in a few agreements, the official had already made concessions to the administrative forces. For instance, the Indian Constitution places a lot of emphasis on the President's administrative powers. Under British rule, while the debate over the issue in the West was in full swing, the issue of the delegation of legislation in India first emerged. In independent India, the dispute over how to allocate legislative authority appeared to be a confrontation between English and American kinds of resolution.

More than 400 articles make up the Indian Constitution, thus it is not surprising that the authors decided to incorporate a solution. But why did these clauses become included in the Constitution in the first place? This is as a result of the politicians' propensity to multiply legal formulations in the Constituent Assembly. Compared to other more significant constitutional matters that the Assembly

sidestepped and left to future agreement or judicial interpretation, these topics were of modest importance on which legal formulation was made.

The Privy Council examined the nature, scope, and viability of the legislative branch's authority in *Queen v. Burah*. In this instance, the Privy Council ruled that the Councils of Governor-General were the ultimate legislative body, with a wide range of authority and qualified to delegate specific duties to provincial executors. The Privy Council agreed to the transfer of legislative authority to the executive when the New Delhi Act of 1912 was passed.

Reasons for the growth of delegated legislation:

- a) Due to the widening scope of State action, there is a substantial amount of legislation that prevents the legislature from allocating enough time to thoroughly discuss every topic. Legislation creates the broad policy—the skeleton—and gives the administration the authority to fill in the details—"thus giving flesh and blood to the skeleton so that it may live"—by passing the required statutes, bye-laws, and other documents.
- b) Sometimes, the subject matter on which legislation is needed is so complex that the legislator—who is a member of the general public—cannot be expected to understand it and pass the necessary laws without the help of specialists. Despite being the best politicians, members of parliament are not qualified to manage highly technical issues that call for experts.
- c) It is difficult to foresee every possibility at the moment a legal legislation is passed, so some provision must be made for these unforeseen events necessitating immediate response. A legislative amendment is a tedious and laborious procedure, but the executive can respond quickly to a situation by using delegated legislation.
- d) The executive can try new things thanks to the practise of delegated legislation. The benefit of such a strategy is that it enables the delegated authority to consult interests that may be impacted by a specific law, conduct actual tests as and when required, and make the greatest use of the findings of his research and experiments. The rules and regulations can be put into effect if they are deemed to be satisfactory. On the other hand, if they are discovered to be flawed, flaws can be fixed right away.
- e) In an emergency, swift action is necessary. The legislative process is not set up to offer an immediate fix to the problem. The only practical—indeed, the only remedy that is even conceivable—is delegated legislation.

- f) Therefore, the executive is given exceptional and highly broad powers to handle the situation in times of war and other national emergencies, such as aggression, a breakdown in law and order, a strike, a bandh, etc.

III. LEGISLATIVE CONTROL ON DELEGATED LEGISLATION

While it is true that subordinate legislation has grown to be a crucial component of legislation in light of the complexity of lawmaking, it is also crucial to consider how the executive's use of delegated authority to pass laws can be compatible with democratic principles and parliamentary control. Since the legislature is the one who grants the executive branch with legislative authority, it is up to the legislature to oversee, regulate, and prevent the administration from using its authority in a disagreeable, abusive, or unjustifiable manner.

According to M.P. Jain, the legislature has the following authority over laws that are delegated:

“In a parliamentary democracy it is the function of the legislature to legislate. If it seeks to delegate its legislative power to the executive because of some reasons, it is not only the right of the Legislature, but also its obligation, as principal, to see how its agent i.e. the Executive carries out the agency entrusted to it. Since it is the legislature which grants legislative power to the administration, it is primarily its responsibility to ensure the proper exercise of delegated legislative power, to supervise and control the actual exercise of this power, and ensure the danger of its objectionable, abusive and unwarranted use by the administration.”

According to the following ways the parliamentary body can efficiently exert its legislative control:

- a) **Laying on table-** Under this method, the safety-valve is followed by the legislature for exercising supervision, check and control over the executive rule-making. It brings the legislature more-close to the working of the administration. But it has not always been mandatory in nature. According to it, the two purposes are served-
- What rules are made by the executive in respect to the powers delegated on them.
 - Opportunity to question and challenge the rules so made or to be made by the executive

- b) Scrutiny Committees-** The main purpose of this committee is to scrutinize and report to the respective houses whether the delegated legislation is properly exercised or not by the executive.
- c) Limiting the power properly and precisely-** It is regarded as one of the other most useful controlling method because if the extent of the power is not defined appropriately under the parent act and the language is used broadly, there is always a high chance of the executive authority misusing the powers conferred on it by the legislature and which may result in unjustified interference with the rights of the citizens. Also, there is a presumption based on the high positions that the one who occupies it has good sense that is, they won't misuse the powers but such a presumption is not supported by the history and the reality does not warrant it. Therefore, It is maintained that only reliable authorities, such the federal government or state governments, should get power delegation since they will exercise the entrusted authority in a prudent manner.

IV. DO INDIA REALLY REQUIRES DELEGATED LEGISLATION?

Delegated legislation is one of the most contentious topics in the field of legal theory because of its numerous ramifications. The legislative, the executive branch, the judiciary, and the free press are believed to be India's four pillars of democracy. The constitution gives these pillars the authority to refrain from meddling in other people's affairs. According to the Constitution, the Executive and Legislative have the authority to enact laws and carry them out. The judiciary has the authority to settle disputes and administer justice. However, it is important to remember that in welfare states, the legislature must carry out a variety of duties, and it is not simple for the legislature to handle everything.

In contrast to this rising legislative activity, the legislatures lack the time necessary to pass laws covering every last specificity. They have kept their focus on policy issues and given the Executive broad discretion to enact laws that further the legislative goals. The system of delegated legislation immediately springs to mind in these kinds of circumstances.

As a result, the need for delegation is evident, and it is defended on the grounds of speed, flexibility, and adaptability. Additionally referred to as secondary legislation or subordinate legislation, this

delegation. The Enabling Statute, sometimes known as the Parent Act, confers legislative authority on the executive. Authoritative controls are ineffective due to the majority rule standard.

V. CASES

- 1) **Delhi Laws Act, 1912, re (1951):** In this case, the seven judge bench gave their separate opinions. The judges' rulings in this particular case ultimately influenced how India perceived delegation. The 7 opinions were based on the same position as the Supreme Court, which was as follows:
 - 1) The Indian Constitution does not mention "separation of powers."
 - 2) No one has ever viewed the Indian parliament as their agent. The notion of delegates non potest delegare is therefore not relevant.
 - 3) Establishing a separate authority would be a clear dereliction of duty for Parliament.
 - 4) Delegation is only permitted for auxiliary tasks.
 - 5) The transfer of power is subject to restrictions. The fundamental duties of the legislature cannot be transferred. Defining the legal policy and adopting that policy as obligatory codes of conduct are essential functions.
- 2) **Harishankar Bagla v. State of M.P (1954):** The Supreme Court ruled that there was not an excessive amount of delegation in this case because the legislative policy was clearly stated in the legislation. As a result, the judiciary approved a relatively broad delegation of legislative authority.
- 3) **Edward Mills Co. Ltd. v. State of Ajmer (1955):** The Supreme Court upheld the validity of the act. The legislative policy to set minimum wages in order to prevent the possibility of labour exploitation, according to the court, was evident on the act's face.
- 4) **Hamdard Dawakhana v. Union of India (1960):** In this case, the central act was held to be ultra vires on the ground of excessive delegation and the Supreme Court held that the power delegated was unguided and uncontrolled.
- 5) **Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST (1974):** Section 8(2)(b) of the Central Sales Tax Act of 1956 was maintained in this case by a unanimous five-judge court. The guideline

hypothesis, which was endorsed in Birla Spinning and Weaving, was reiterated by Justice Khanna. While concurring with the majority, Justice Mathew offered an alternative justification and stated that it was not the Court's place to "hunt for legislative policy or guidance in the crevices of the Statute." With this decision, the issue of how fully the executive could carry out the tasks that the legislature had granted it authority over in its capacity as a tax collector received some resolution.

- 6) **B. Shama Rao v. UT of Pondicherry (1967):** By a majority of 3:2, the Supreme Court declared the Pondicherry Act invalid and stillborn, concluding that the Pondicherry legislature had completely ceded its legislative authority to the Madras legislature.
- 7) **Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group (2006):** The Supreme Court ruled that delegated legislation is subject to the same presumption about validity as legislation passed by state or federal legislatures.
- 8) **M.P. High Court Bar Assn. v. Union of India (2004):** According to the Supreme Court, the legislative branch of government has the authority to enact laws. Therefore, the legislative branch cannot give the executive branch the authority to establish laws. In other words, neither the creation nor destruction of a parallel legislature are within the power of a legislature. The legislature itself must maintain all necessary legislative functions. These duties include formulating legislative policy as a binding code of behaviour and determining its direction.
- 9) **Rojer Mathew v. South India Bank Ltd. (2020):** The Supreme Court ruled that the legislative transfer of power to the executive is unavoidable and administratively necessary in light of the complexities of contemporary administration as well as administrative urgencies. However, the legislature cannot give the executive authority over crucial legislative duties. It is difficult to define what constitutes an important legislative function, but it is evident that an essential legislative function entails the formation of a legislative policy that is binding on all parties.

VI. SUGGESTIONS

- 1) Representatives who have been elected have full legislative authority. But in practise, the political government, under the direction of the bureaucracy, passes laws using the whip or other means. As a result, a select group of elites have continued to hold the largely exclusive right to make laws. It influences not only the effectiveness of the laws produced but also strengthens the centralised structure of authority. Therefore, social auditing must be conducted by the general population.
- 2) It is impossible to overlook the fact that delegated legislation is here to stay and will continue to be part of the legal system. In addition, there are serious risks associated with giving the executive branch broad authority. Therefore, it is crucial that there be effective oversight of the executive's use of the legislative branch. When the legislative grants such authority to the administration, there should be two levels of protection: There should be a "control mechanism" to prevent the executive from abusing the power when the legislative grants such authority to the executive in two situations: 1. when it does so; and 2. when it does not.

