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DELEGATED LEGISLATION AND ITS INFLUENCE IN INDIA, USA AND ENGLAND

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INTRODUCTION

Indian constitution entitles the legislature to form laws for the country. one of the important functions of legislature is to regulate a legislative policy and to shape it as a rule of conduct. It is clear that such powers cannot be grant to other organizations. But keeping in mind numerous activities of welfare state, it is literally impossible for the legislature to perform all the functions. In such circumstances, the idea of delegated legislations comes into picture.

It is one of the most required elements of administration, through which the executive has to perform specific legislative functions. But the risk associated with process of delegation must not be ignored. Generally, an exhausted legislature may excessively exceed the limits of delegation. It may not lay down any policy, may declare any of its policy as indefinite and may set down any directions for the executive thus, awarding wide discretion to the executive to change or alter any policy framed by it without keeping for itself any control over subordinate legislation. Therefore, even though legislature can assign some of its functions, but it must not lose its control completely over such functions.

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WHAT IS DELEGATED LEGISLATION?

Delegated legislation means the exercise of law-making power by the executive under the authority delegated to it by the legislature and also the rules, regulations, byelaws, etc., made by the executive in the exercise of the law-making power delegated to it by the legislature.

This is a quasi-legislative function of the executive. Here, there is no need of a prior notice and hearing of the parties unless the statute delegating the power of legislation expressly requires them. Thus, when the executive authorities exercise the law-making power delegated to them by the legislature, it is called quasi legislative functions. Quasi legislative action has generally all the characteristics of the legislative function.

The term- 'delegated legislation' is used in two senses:

- 1) The exercise of the legislative power by a subordinate agency by means of the power delegated to it by the legislature.
- 2) The subsidiary rules made by the subordinate authority by the power conferred on it by the legislature.

According to De Smith, both the legislative act and quasi legislative act is the creation and promulgation of a general rule of contract without reference to particular cases.

The powers under subordinate legislation are limited and valid only as far as they are within the limits of parent legislation passed by the legislature. The delegated legislation means and includes all rules, regulations, bye-laws, orders, etc.

The legislature conferring the legislative power upon the executive is called the parent act, and the rules, regulations, etc., made by the executive under the legislative powers are known as subordinate laws or subsidiary laws or child legislation.¹

REASON FOR THE GROWTH OF DELEGATED LEGISLATION

¹ iPleaders. 2022. *Delegated Legislation and its Control - iPleaders Blog*. [online] Available at: <<https://blog.ipleaders.in/delegated-legislation/#:~:text=Delegated%20legislation%20is%20generally%20a,requirements%20of%20the%20primary%20authority.&text=It%20is%20also%20known%20as%20subordinate%20legislation%20in%20administrative%20law.>> [Accessed 18 February 2022].

The administration of a country is a difficult problem. It requires rules and minor details. So, for efficient administration, the administrative authorities must be given opportunity to frame rules and bye-laws.

For example, the municipality can make bye-laws. The state and central cabinet of ministers can enact rules and laws.²

- 1) **LEGISLATURE OVERBURDENED:** The legislature is burdened with many legislative functions. So, it has no time to give details or frame rules. Therefore, the legislature formulates the general policy and the executive fills in the details. Thus, the strain of over work is relieved for the legislature.
- 2) **FLEXIBILITY:** Delegated legislation brings flexibility to legislation. A legislative amendment is a slow process whereas a change in the delegated legislation is easily possible. The rules, regulations, by-laws, or orders, etc., if defective, may easily be amended.
- 3) **TECHNICAL KNOWLEDGE:** Many legislations require technical knowledge. This can be given only by experts in the administrative lines. For example., atomic energy, electricity, etc.

CASE- AGRICULTURAL MARKET COMMITTEE VS. SHALIMAR CHEMICAL WORKS LTD: The supreme court held that the main reason for the delegated legislation is the technically complex areas which cannot to be correctly stated in the statute.

- 4) **LESS ERROR IN PROCEDURE AND SUBSTANCE:** delegated legislations is made by the makers after intimate contact with the problems. So, there is less error in procedure and substance.
- 5) **DISCRETIONARY POWERS TO THE EXECUTIVE:** Delegated legislation allows discretionary powers to the executive and it regulates the discretion also by specific rules. With the discretionary powers, the executive authorities apply the delegated legislation depending on the circumstances and situations.
- 6) **CONDITIONAL LEGISLATION:** sometimes the legislature may enact a law whose prospective operation either in time or place or both depends on the fulfillment

² , https://www.cusb.ac.in/images/cusb-files/2020/el/law/Delegated%20Legislation_6th%20Sem.pdf (last visited Feb 18, 2022)

of a condition. This is called conditional legislation. Conditional legislation is helpful for the executive to apply the delegated legislation, depending on the nature and circumstances of each case.

- 7) **EMERGENCY TIMES:** During emergency times, the delegated legislation reduces the work of the legislature. Thus, in times of war and national emergencies, etc., the executive is vested with special powers to deal with such situations.
- 8) **APPLICATION WITH MODIFICATIONS:** sometimes the law has to be applied with some modifications as per the local needs. Here the legislature lays down broad outlines and guidelines. The details are left to be filled by the administrative authorities who implement the law.
- 9) **SECRECACY:** sometimes, the public interest requires that the law should not be known till it comes to force e.g., in cases of import duty, exchange control, new levy of taxes etc. for this purpose, the delegation of powers to executive to make rules, regulations, by-laws, etc., is necessary.
- 10) **EXPERIMENT:** The executive is allowed through delegated legislation to experiment new rules and regulations and observe its compliance. Such experimental application is impossible in legislations.
- 11) **COMPLEXITY OF MODERN ADMINISTRATION:** Today every state has become a welfare state. So, there is complexity of modern administration and expansion of the multiple functions of the state. Hence new forms of legislations like delegated legislation, etc., are needed.

Due to above said reasons, the rapid growth of delegated legislation all over the globe is unavoidable and a reality.³

CLASSIFICATION OF DELEGATED LEGISLATION:

The delegated legislation may be classified into four types:

- 1) Title based delegation
- 2) Conditional or contingent legislation
- 3) Central, state and concurrent delegation
- 4) Sub-delegation

1) TITLE BASED DELEGATION:

³ https://www.cusb.ac.in/images/cusb-files/2020/el/law/Delegated%20Legislation_6th%20Sem.pdf (last visited Feb 18, 2022)

The delegated legislation exists in the form of rules, regulations, byelaws, directions, orders, schemes, etc.

- a) **RULE:** it is a rule made in the exercise of powers awarded by any legislation and it also includes any regulation made under such rule of the enactment. It may be a general, particular, substantive or procedural rule.
- b) **REGULATION:** Is an instrument by which orders, decisions and acts of the government are made known to the public.
- c) **BYE LAW:** These are the rules made by the semi-government authorities established under a statute. E.g., rules made by local authority acts, companies act, co-operative societies act, etc.
- d) **ORDER:** This order refers to legislative and quasi-judicial decisions. The order or specific order.
- e) **DIRECTION:** It is an instruction given by the superior officials to the subordinates and the department to regulate their internal functioning. It may be compulsory direction or persuasive.
- f) **SCHEME:** It is a frame work within which the administrative authority has to function.

2) CONDITIONAL OR CONTINGENT LEGISLATION:

Sometimes the legislature may enact a law whose prospective operation either in time or place or both depends on the fulfillment of a condition. The condition is laid down by the legislature and the government is given an authority of discretion the date and place of fulfillment.⁴

Conditional legislation takes place when the legislature empowers the executive:

- 1) To extend the operation of an existing law to an area or territory.
- 2) To determine the time of application of an act to a new area.
- 3) Determine the extent of limits within which it should be operated.
- 4) To extend the duration of temporary act subject to the maximum period fixed by the legislature.
- 5) Bring into force a special law.
- 6) To determine date and facts, on which the operation of law is made to depend.

CASE: RAJNARAIN SINGH Vs. CHAIRMAN, PATNA ADMINISTRATION

⁴ Delegated Legislation and its Control - iPleaders Blog iPleaders, <https://blog.iplayers.in/delegated-legislation/#:~:text=There%20are%20three%20forms%20of,in%20council%20and%20by%2Dlaws.> (Last visited Feb 18, 2022)

COMMITTEE:

In this case, the supreme court has upheld the delegation of power but has held that ,the government could not make a change in the essential policy of the Act when it picks out a section of the Act and applies it to a designated area.

The court stressed by saying that when a section of an act is selected for application, it must not effect any change of policy or any essential change in the act.

TULSIPUR SUGAR CO., LTD., Vs. NOTIFIED AREA COMMITTEE (1980):

By information under sec.3 of the U.P. Town areas act 1914, the Tulsipur town limit was extended to Shitalpur village. The plaintiff who was the owner of a sugar factory in Shitalpur claimed that the procedure under the act was not followed and the subordinate legislation was bad.

The supreme court held that it was only a case of conditional legislation as it was a provision making the act applicable to a geographical area. It also held that it was not a subordinate legislation.

SUB-DELEGATION:

It means transfer or transmission of power from a superior authority to its subordinates.

Sub-delegation takes place when the rule making authority delegates further power to issue rules or directions, either to its or some other subordinate agency. Thus, a delegate further delegates. It is thus an exception to the rule, “**DELEGATUS NON POTEST DELEGARE**” (A delegate cannot further delegate).

A) Reasons for sub-delegation:

- 1) The superior authority has to concentrate often on more important administrative functions.
- 2) The number of cases to be dealt are so much that one single authority may not be able to cope with all cases.

So, it authorizes a number of officers in the department to dispose of such matters, through subordinate legislation.⁵

⁵ Delegatus Non-Potest Delegare - iPleaders iPleaders, [https://blog.ipleaders.in/delegatus-non-potest-delegare/#:~:text=When%20a%20statute%20confers%20legislative,it%20is%20called%20sub%2Ddelegation.&text=If%20the%20enabling%20Act%20is,act%20is%20called%20the%20Children.\(Last%20visited%20Feb%2018,2022\)](https://blog.ipleaders.in/delegatus-non-potest-delegare/#:~:text=When%20a%20statute%20confers%20legislative,it%20is%20called%20sub%2Ddelegation.&text=If%20the%20enabling%20Act%20is,act%20is%20called%20the%20Children.(Last%20visited%20Feb%2018,2022))

DELEGATED LEGISLATION IN ENGLAND, USA AND INDIA

IN ENGLAND:

In England, the parliament is supreme since, the principle of 'sovereignty' prevails over the state. Thus, has immense powers to make any law. Where, no court can question the law made by parliament on any ground. Which means there is no limit for the parliament in regard to delegation of its power to the executive. The parliament do not require to provide any merit in the exercising of power. Thus, there is no outside authority to force the parliament to issue policy or protection in the statute delegating legislative power. In case of misuse of power, the remedy lies with the parliament itself and can control delegation if it pleases.⁶

IN USA:

The delegated legislation is not accepted in theory, because of the doctrine of 'separation of powers' and '**delegatus non potest delegare**', i.e., a delegate cannot further delegate. But in practice, since the governmental functions had increased, it was impossible for the congress to enact all the statutes, and so delegation of powers is now practiced in U.S.A.

In Panama Refining Co. Vs. Ryan:

The national industrial recovery act authorized the American President to prohibit the transportation of excess of oil produced in a state in the interstate commerce.

The Court held that such a delegated legislation was invalid as no standard for the action of the president was formulated i.e., under what circumstances or conditions, such authority delegated to the president could be exercised.⁷

IN INDIA:

The origin and growth of delegated legislation in India may broadly be classified into two headings:

- 1. Pre-constitutional period (before 1950)**
- 2. Post-constitutional period (after 1950)**

⁶ Dr. Rega Surya Rao, lectures on administrative law, pg. 74 (2nd edition, cited on 12 Feb, 2022

⁷ https://www.cusb.ac.in/images/cusb-files/2020/el/law/Delegated%20Legislation_6th%20Sem.pdf (last visited Feb 18, 2022)

1) PRE-CONSTITUTIONAL PERIOD (BEFORE 1950):

The East India Company acquired political control in India through the Charter Act of 1833 and delegated the legislative powers of his majesty to the governor general in council to make rules and regulations under the act.

By the government of India Act 1935, the intensive scheme of delegation was brought in through which the Governor General, the executive head, had full powers to make legislations in the reserved subjects and also to issue decree on the advice of the Council of Ministers.

The leading case in pre-constitutional period is:

Queen Vs. Burah:

In 1869, the Indian legislature passed an act authorizing the governor of Bengal by a notification and extended the application of the act to Jaintia and Naga and Khasi hills.

Burah, a resident of jaintia and Khasi hills, was arrested on charge of murder under the above act and was sentenced to death.

Burah challenged the application of the act to the Khasi and Jaintia hills by the order of Bengal governor on the ground that it was ultra vires, as the governor had no powers to extend the Act.

The privy council held that it was a conditional legislation empowering the governor to extend the application of an existing law to a new area or territory and therefore valid.

The conditional legislation laid down in the Burah case was subsequently applied by Indian courts in a number of cases.

By virtue of the above case, the president can promulgate ordinances and the executive can make rules and regulations under the parent act passed by the legislation. The constitutional validity of these provisions was upheld by many leading case laws.

2) POST CONSTITUTIONAL PERIOD (AFTER 1950):

a) In Re-Delhi laws act, AIR 1951 SC 332:

After the establishment of supreme court, this was the first leading case decided by the Supreme Court. Under the Delhi laws act 1912, the states were divided into part A states, Part B states, and Part C states. The central government by Sec. 2 of the sub-Act called 'Part C states law Act 1950' extended any enactment in Part A to any areas of Part C state to any areas of Part C state with such modification/ restriction as is necessary.

The government was also authorized to repeal/amend any other state law to conform with the

modification/ restriction made by it under sec. 2 of the said Part C states Act.

The legality of the above aspect of delegated legislation by the central government was questioned in the supreme court. The Supreme court by a bench consisting of judges looked into various aspects of the power of the central government to enact laws and in doing so, it laid down many conditions restricting the power of the Central Government to make laws.

Two major limitations imposed on the Central Government in the said case are as follows:

1. The executive has no power to repeal a law already in force. Such power of repeal lies only with the legislature.
2. The central government while modifying or restricting any law should keep in view the legislative policy/guideline of the parent act and therefore no modification/restriction is allowed as to change the legislative policy.

The court held that the delegation under sec. 2 of the central government is only conditional legislation and not delegated legislation and therefore valid.

b) Hari Shankar Bagla Vs. state of M.P., AIR 1954 SC 465:

The state of M.P enacted the cotton textiles order under the Essential supplies Act. The Act required a permit for the movement of cloth. Bagla was arrested for not having a valid permit and for transporting cloth without permit. The order was challenged by Bagla. Since the Act had no direction, the court held that there was enough guidance for equitable distribution of cloth at a fair price and hence the order was valid.

c) Bhatnagar Vs. Union of India, AIR 1957 SC 478:

Bhatnagar had a license under the imports and exports act. The collector seized the goods. The petitioner challenged the order of the collector as ultra vires and excessive delegation. The court held that there was sufficient guidance in the main act for supply of essentials for life of the community and hence the act was held valid.

d) Hamdard Dawakhana Vs. Union of India, AIR 1960 SC 554:

The drugs and magic remedies act prohibited the advertisement of magic drugs to cure hidden diseases. Dawakhana challenged the order as excessive delegation. The supreme court held that there was no direction, or proper standard laid down and hence held the act void.

e) Brij Sundar Vs. First Addl. District judge, AIR 1989 SC 572:

Certain diseases have been mentioned in the drugs and Magic Remedies Act 1954 and the government was empowered to include and 'any other disease' in the diseases mentioned in

the Act.

In this case, the court held that there is nothing objectionable in such a provision and hence valid. Further the court observed- once essential legislative powers are exercised by the legislature, then all the other incidental functions can be delegated to the executive.⁸

CONCLUSION:

Therefore, to conclude, delegated legislation means rules of law made under the authority of an act of parliament. Even though, law making is the function of legislature, it may, by a statute, delegate its powers to other bodies or persons.

Delegated legislation is important in the wake of the rise in the number of legislations and technicalities involved. But at the same time with rise in delegated legislations, the need to control it also arises because with the increase in the delegation of power also increases the chance of the abuse of power.

Apart from the legislative and procedural control, the judicial control is the way how the delegation of power can be controlled.

Consequently, the delegated legislation can be questioned on the grounds of substantive ultra vires and on the ground of the constitutionality of the parent act and the delegated legislation. The latter one can also be challenged on the basis of it being unreasonable and arbitrary.

⁸ https://www.cusb.ac.in/images/cusb-files/2020/el/law/Delegated%20Legislation_6th%20Sem.pdf (last visited Feb 18, 2022)

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- 3) Delegatus Non-Potest Delegare - iPleaders iPleaders, <https://blog.ipleaders.in/delegatus-non-potest-delegare/#:~:text=When%20a%20statute%20confers%20legislative,it%20is%20called%20sub%2Ddelegation.&text=If%20the%20enabling%20Act%20is,act%20is%20called%20the%20Children.> (Last visited Feb 18, 2022)
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