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DELEGATED LEGISLATION

AUTHORED BY - ANURAG KUMAR

Introduction

Delegated legislation refers to laws created by the executive branch, based on the authority granted to them by the primary governing body, to carry out, enforce, and administer the provisions of the primary legislation. It might be stated that it is legislation enacted by an individual or governing body with the authority of parliament. It is referred to as subordinate legislation in the field of administrative law. It grants subordinate bodies, such as those beneath the principal authority or legislature, the power to create laws in accordance with specific needs or demands. By means of a legislative enactment, Parliament possesses complete jurisdiction to authorise any individual or entity to create laws. An act of parliament establishes a legal framework that serves as a blueprint for a specific statute, outlining its intended purpose. The crucial objective of this is that any legislation through such delegation should align with the aims specified in the act.

The primary characteristic is that it enables the state government to modify laws promptly, without the need to wait for the enactment of a new law by the Parliament. Delegated law has the authority to modify sanctions if there are any requirements, particularly in response to technological advancements. When the Parliament delegates jurisdiction to an individual or entity, it allows them to contribute additional specifics to the parliamentary act.

For instance, the local governing body possesses jurisdiction granted by a higher entity to create or modify legislation in accordance with the needs of their specific regions. Delegated legislation is of great significance due to its greater quantity compared to acts of Parliament. It possesses equivalent legal status to the act of Parliament from which it originates.

The three forms of delegated legislation are statutory instruments, orders in council, and by-laws.

Legislative regulations

They are the ones that are established by the government. For instance, a parent act is a legislative

act that grants the parliament the authority to create laws. Orders in the council are typically issued by the government in response to a necessity that can have an impact on both the general public and individuals.

Regulations

They are established by the local authority that has been authorised by the Central Government. There are numerous justifications for the delegation of legislative powers. The parliament has limited time for deliberation and debate on each item. Delegated legislation facilitates the expeditious creation of laws compared to the lengthy parliamentary process, where bills must pass through multiple stages for each law. Moreover, it is also claimed that the Member of Parliament lacks the requisite technical proficiency necessary for legislating. For instance, enacting any legislation pertaining to taxation necessitates expertise and experience, which can only be possessed by a professional in the industry. When it comes to welfare, the local government is better equipped to comprehend the needs of the people in their region compared to others. Democratic institutions has significant authority in the realm of delegated legislation, allowing for the efficient modification of laws to meet societal needs and promote the well-being of the populace.

However, it is essential to exercise authority over delegated legislation. The Parliament and the Judiciary exercise control over delegated laws. The Parliament exercises ultimate authority over delegated legislation, as it considers the input of statutory committees that create laws through bills. The primary objective of parliamentary oversight is to ensure that rulemaking authorities do not engage in any form of misuse or excessive exercise of their powers.

Instances

In the case of *Narendra Kumar v. Union of India*, the Supreme Court ruled that Section 3(5) of the Essential Commodities Act, 1955, requires that any rules made under the Act must be presented to both houses of Parliament. Hence, clause 4 of the Non-Ferrous Control Orders, 1958 remains ineffective until it is formally introduced in Parliament.

The judiciary establishes a set of regulations regarding its supervision over the delegation of legislation.

The court ruled in the case of *Chandra Bhan* that the delegation of laws must be reasonable and free from any form of unreasonableness.

Delegated legislation ought to safeguard the principle of legality and must not exhibit any form of capriciousness. Rules that contravene the Parent Act are considered illegal. Rules that contravene any other statute should likewise be deemed invalid. Illegality is attributed to delegated legislation that is enacted with mala fide intention.

To enhance comprehension, please review the enclosed PowerPoint Presentation. The explanation of the Control Mechanism of Delegated Legislation is further improved in this edition.

Causes contributing to the swift expansion of Delegated Legislation

- **Parliament's Burden** - The increasing number of activities in states necessitates legislation, making it impractical for Parliament to allocate sufficient time to address every issue. Consequently, the Parliament has established certain policies that enable the executives to create legislation properly.
- **Expertise**: Certain subject topics require technical expertise, which is beyond the knowledge of Members of Parliament. Therefore, it is necessary to involve professionals who specialise in certain fields. Thus, professionals are granted the authority to address technical issues such as gas, atomic energy, pharmaceuticals, and others.
- **Flexibility** - The Parliament cannot anticipate every possible situation while passing a law, so it is necessary to include some provisions. However, the process of amending is both sluggish and burdensome. Hence, the process of delegated legislation enables the executive power to enact laws in accordance with the prevailing circumstances. Bank rates, policy regulations, and similar factors play a significant role in shaping legislation.

During times of emergency, the legislative branch is unable to promptly produce a remedy to address the crisis. If such a situation arises, delegated legislation is the sole recourse that may be pursued. During times of war or national emergencies, the executives are granted additional powers to address the issue.

The modern administration has become increasingly complex due to the expansion of state functions into economic and social spheres. As a result, there is a need for new reforms and the delegation of more powers to different authorities in certain situations. In a country such as Bangladesh, where there may be a need to impose control over private commerce, enterprise, or property, it is necessary to grant the administration sufficient ability to implement such a policy and take immediate actions.

Consequently, in order to promptly and appropriately address issues, there has been a significant increase in the use of delegated legislation in all countries. Due to its importance and usefulness, it has become an integral component of the current administrative age.

Benefits of Delegated Legislation

- Optimize efficiency for the legislative.
- Enable adaptability.
- Legislation necessitates the input of an expert opinion.
- Parliament is not consistently present during sessions.
- Utilized as a foundation for experimentation.
- It is utilised in emergency situations.
- The case can be resolved quickly by consulting the necessary party.

Delegated Legislation Critique

The legislative control has a prolonged duration due to the supreme authority of the legislature, which comprises the three primary organs of the state: Judiciary, Legislative, and Executive.

- All entities must collaborate and interact with one another, ensuring a harmonious distribution of power among them to facilitate efficient functioning. Delegated legislation has diminished the executive's legislative influence, notwithstanding its perceived benefits.

The executive has gained more power through delegated legislation, allowing it to potentially infringe upon the rules and regulations set by the legislative body by creating its own rules.

- This idea contradicts the principle of Separation of Power.
- Insufficient deliberation before enacting the legislation.
- It is inconsistent with the principle of the rule of law.
- The stability of this phenomenon is inherently volatile, as it constantly oscillates in response to political shifts.

Delegated authority refers to the power granted to administrative bodies by legislation to make decisions and take actions on behalf of the government.

The concept of delegated law is acknowledged in numerous nations across the globe. The responsibility of determining whether a nation's constitution lacks specific provisions governing the extent of delegated legislation is with the courts. Significantly, the constitutions of nations such as the United States, India, Australia, Canada, and South Africa do not specifically mention

or deal with this particular matter.

In the Indian context, many courts, ranging from the Privy Council to the present Supreme Court, have been required to evaluate the constitutionality of administrative regulations. The Supreme Court of India has set legal norms through several rulings, which currently act as a reference point for evaluating the legitimacy of any delegation.

In the case of *Indian Oil Corporation v. Municipal Corporation, Jullundhar*, the court ruled that any delegated law must be consistent with the parent statute and should not conflict with important legislative policies. It was explicitly stated that no delegate shall possess more legislative authority than any other delegate.

The legislature is prohibited from delegating its core legislative duties, which include formulating a plan for supervising a particular statute. According to an alternative interpretation of the same principle, it is not allowed to delegate non-essential duties, even if they are considered vital. The courts have acknowledged different methodologies for evaluating the constitutionality of the challenged Act, which will be obligated to thoroughly examine, deliberate, and contemplate the justifications for its constitutionality.

The Supreme Court has underscored that the rationale for delegated legislation is rooted in its inadequacy to establish a dependable foundation for assessing the authority's competence. However, the court considers the importance and significance of previous and current circumstances pertaining to the exercise of rule-making authority.

The legality of delegated legislation during the pre-independence period.

Prior to India achieving independence, the case of *Queen v. Burah (1878)* established a precedent in which the Privy Council allowed legislation with certain conditions. In this case, the power to make laws was given to the executive branch.

The responsibility for overseeing the administration of civil and criminal justice in a territory could be delegated to individuals who are consistently selected by the Lieutenant Governor. In the case of *King v. Benoari Lal Sharma*, the Privy Council utilised legislative conditions, same like in the case of *Queen v. Burah*. This case pertained to a judicial challenge against the

Governor-General of India's Emergency Ordinance, which sought to supplant the provincial administration and establish distinct criminal tribunals.

The provincial government had exclusive jurisdiction to establish these courts, and the judicial committee of the Privy Council determined that this did not qualify as delegated legislation. They clarified that it was an atypical legislative jurisdiction, in which a regional administrative entity determined the local execution of state statutes as needed.

The constitutionality of delegated legislation in the post-independence period. The Indian Constitution does not confer legislative powers in a manner identical to the British Parliament. The permissibility of delegation in India is contingent upon the precise conditions outlined in the Indian Constitution. When it comes to legislative concerns, there is no notion of an unrestricted entitlement to delegate. In the case of *Raj Narain Singh vs. Chairman, Patna Administration Committee* (1954), the Supreme Court of India affirmed the delegation of authority from the legislative body to the executive body.

This case granted the local government the authority to broaden the provisions of the Bengal Municipality Act. Nevertheless, in the *Hamdard Dawakhana vs. Union of India* (1959) case, the Supreme Court ruled that the transfer of powers was illegal because it lacked clarity. The court determined that the Center's power to classify diseases and ailments under the Drug and Magic Remedies (Objectionable Advertisements) Act of 1954 was "unrestrained" and went beyond the acceptable limits of legal delegation, making it unconstitutional.

The Supreme Court, in a 1973 case, highlighted that its interpretation of delegated law had progressed in accordance with the practical requirements of a contemporary welfare state.

Delegated Legislation: Position within the Indian Constitution

The Indian Constitution confers to the legislature the power to delegate its duties to other entities and to formulate guidelines for the implementation of the legislation it passes. Regarding D. In the case of *S. Gerewal v. State of Punjab*, the Supreme Court provided a clear explanation that Article 312 of the Indian Constitution pertains to the authority of delegated legislation. Justice K.N. Wanchoo emphasised that Article 312 does not limit the legislature's usual authority to delegate powers. The wording "Parliament may by law provide" in Article 312 should not be misconstrued as excluding the possibility of delegation in a law adopted under Article 312.

In England, the legal system permits Parliament to delegate an unrestricted number of tasks. However, in America and India, Congress and Parliament, respectively, can only transfer specific authorities. This indicates that they lack absolute or unchecked power.

Delegated legislation in India is constitutionally valid, but it must adhere to particular and well-defined limitations to ensure its explicit and regulated implementation. The Constitutionality of Delegated Legislation exists in India, although there are limitations in place to ensure conformity with the parent act.

Criteria for Assessing the Constitutionality of Administrative Delegated Legislation
The Supreme Court of India has created legal principles through its rulings that provide a framework for assessing the constitutionality of administrative rule-making. The following deductions can be made from these cases:

Alignment with Parent Act: In the case of *Indian Oil Corporation v. Municipal Corporation, Jalandhar*, the court held that any delegated legislation must be in accordance with the parent act and must not contradict its legislative policies. The implication was that a delegate should not possess greater legislative power than the delegator.

The legislature is responsible for establishing the allowable parameters of administrative rule-making. This restriction is applicable to all types of delegated legislation. The legislature is unable to transfer its fundamental legislative powers, which involve establishing the policies that govern an action. It is not permitted to delegate non-essential tasks, regardless of their importance.

Contradictory statements are now deemed acceptable policy by the courts, following extensive debates and deliberations. This policy is crucial in assessing the constitutionality of the applicable Act.

Unreasonableness and Procedural Safeguards: Unreasonableness is an essential factor in assessing the legitimacy of delegated legislation. It is crucial to adhere to any procedural safeguards outlined in the main legislation.

Delegated legislation can be classified into different categories.

The power to enforce the Act is granted to the Central or State Government, who will announce the designated date of enforcement by a notice in the Official Gazette.

In the case of *A.K. Roy vs. Union of India*, the Supreme Court ruled that the executive branch has the authority to enact law and that this authority should not be abused by granting excessive power to delegate legislation. Here, the court dismissed the argument that the power was disproportionate according to the required standards. Enforcement faced significant practical challenges. Thus, the executive authority is granted the power to determine the date on which the act would be implemented.

Conditional legislation refers to laws that are created by the legislature but require enforcement by the executive branch. The executive branch is responsible for ensuring that specific criteria are met in order to put the legislation into effect. If all the necessary requirements are met, then everything is satisfactory. However, if the prerequisites are not achieved, a notice will be sent to enforce the law, which is referred to as Conditional Legislation.

Legislation can be classified into the following types:

- Ability to do the act.

The ability to prolong the duration or lifespan of the act.

The authority to broaden the scope of the act to include any territory and to impose limitations or modifications on the act itself.

- Exclude the operation from applying to specific grounds or subjects of territories. The power to complete the missing parts of a format is delegated to the executive by the legislature. The executive is responsible for providing all the relevant information or components required for the subordinate legislation.

The power to address challenges is inherent - The government may be granted the authority to amend the law through the inclusion of a clause allowing for the removal of obstacles.

Regulation of Delegated Legislation

Delegated legislation encompasses three types of control:

1. Parliamentary or legislative control refers to the authority and oversight exercised by a governing body, such as a parliament or legislature, over many aspects of governance and decision-making.

2. Judicial oversight

Executive or administrative control refers to the authority and power held by individuals in high-level positions within an organisation to make decisions, set policies, and manage the overall operations of the company.

Parliamentary or legislative control refers to the authority and oversight exercised by a governing body, such as a parliament or legislature, over the actions and decisions of the government. In a parliamentary democracy, the legislature has the responsibility to create laws, and it is both the right and obligation of the legislature to monitor the performance of its representatives.

The delegation of power and general standards of control have led to a reduction in the scope and authority of judicial control.

In India, "Parliamentary control" is a fundamental constitutional function since the executive is accountable to the legislature at two phases of oversight.

1. Commencement phase
2. Direct and Indirect stages

During the initial stage, it is necessary to determine the appropriate level of authority that needs to be assigned in order to complete a certain task. Additionally, it is important to assess the validity of the power delegation.

The second step comprises two distinct components.

1. Direct control
2. Indirect control refers to the ability to influence or manipulate a situation or outcome without direct involvement or authority.

Direct control

Implementation is a crucial and necessary factor that is directly regulated and must be carried out according to the specified criteria, which include presenting the rule to the Parliament once it has been established. It consists of three crucial components based on the level of control that needs to be exerted.

1. Basic Placement
2. Reclining in a negative position

3. Positive Placement

"Test of Mandatory" and "Test of Directory" are the two primary tests.

Test of Mandatory - If the requirement to lay down is a necessary condition for the regulation to take effect, then in such a scenario, laying is mandatory.

If a provision specifies that rules must be drafted in a specific format, it is obligatory to adhere to that format.

Test of Directory - When the requirement for implementation of a rule is immediately adjacent, it will be considered directory in nature.

Indirect control refers to the exercise of influence or authority over something or someone in an indirect manner.

This is a form of oversight conducted by Parliament and its committees. Subordinate legislation is an alternative term for this type of committee. The primary function of the committee is to scrutinise.

1. Are the rules in accordance with the overall purpose of the act?
2. It restricts the court's jurisdiction either directly or indirectly.
3. Whether it has retroactive effect or not.
4. Whether it upholds or undermines the Principle of Natural Justice.
5. The expenditure associated with it is sourced from the Consolidated Fund.

Procedural and executive control Currently, there is no specific protocol in place until the legislative body establishes a requirement for the executive branch to adhere to specific regulations or procedures.

Adhering to a specific format may require a significant amount of time, thus undermining the intended purpose of the action. Procedural control refers to the adherence to specific criteria outlined in the Parent legislation, whether they are obligatory or discretionary. The three components are included:

1. Prior to publishing, it is necessary to seek input and guidance from an authoritative expert.
Dissemination of delegated laws.
2. Establishment of regulations.

The specifications provided determine whether it is mandatory or optional, and can be classified as either mandatory or directory.

1. Outline of the legislation.
2. Purpose of the Legislature.
3. The language used for the purpose of drafting.
4. Significant disruption experienced by the general populace.

The case of **Raza Buland Sugar Co. vs. Rampur Municipal Council** involved the presentation of four specific factors.

Judicial oversight

Judicial review enhanced the supremacy of the rule of law. The court must ensure that the delegated power falls within the scope of the constitution as established. Judicial review is more efficacious as courts do not merely propose, but definitively invalidate rules that are supra vires in nature. According to Section 13(3)(a) of the Constitution of India, the term "Law" is defined as a rule or regulation. This definition clearly states that the State is prohibited from creating any legislation that limits or restricts the rights provided in Part III of the Constitution. It relies on two fundamental factors:

1. It is beyond the legal authority granted by the Constitution of India, and
The number
2. It is outside the legal authority granted by the enabling Act.

Conclusion

If there is an overlap between Parliamentary control and delegated legislation in India, it is necessary for the parliamentary committee to be sufficiently strong. Additionally, separate laws should be enacted and approved to provide a consistent framework for the process of laying down and publishing legislation. A committee should include a dedicated entity to oversee the delegated tasks, ensuring they are progressing in the correct direction and being executed efficiently. All three organs should prioritise their tasks and refrain from unnecessary interruptions in order to maintain order in the system.