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GROWTH AND NEED FOR DELEGATED LEGISLATION

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MEANING

The Indian Constitution grants the Legislature the authority to enact laws for the nation, and the Executive is tasked with administering and executing these laws. However, it's not uncommon for laws to contain provisions that authorize the executive government, certain bodies or office-holders, or the judiciary to formulate regulations or other forms of instruments that, when properly executed, have legal effect. This form of law is referred to as "delegated legislation", "secondary legislation", "subordinate legislation", or "legislative instruments". Another interpretation is that any law enacted by a statutory authority or local body other than the Legislature, but under the jurisdiction of a competent legislature, is considered Delegated Legislation. Delegated legislation holds the same legal status as the Act of Parliament from which it originated. While this setup may seem to significantly infringe upon the doctrine of separation of powers, this principle has been largely upheld through a system that allows parliamentary oversight of executive law-making. In essence, delegated legislation refers to a subordinate agency's exercise of legislative power, granted by an act of the legislature. This power is transferred from the primary lawmaker to a lower entity - which could be the executive, cabinet, council of ministers, or a specific administrative agency - through delegation. Regulations and Statutory Rules are frequently encountered types of Delegated Legislation. They are established by the Executive or a Minister and apply broadly to the population. By-laws and occasionally Ordinances are created by a Local Government Authority and apply to residents within that area. Rules often outline the procedures to be followed in Courts. Section 129 of the Civil Procedure Code (CPC) empowers various High Courts to annul, alter or add to any rules contained in the Code.

DEFINITIONS

Sir John Salmond defines "Subordinate legislation" as legislation originating from any authority other than the sovereign power. Justice P.B Mukherjee has noted that delegated legislation is a term that encompasses a wide range of confusion. He perceives it as a justification for the Legislature, a defence for Executors, and a challenge to the Constitutional Jurist.

According to **M.P Jain**, the term can be understood in two ways:

1. The exercise of power by a subordinate agency or an agency ranked lower than the legislature, delegated to it by the Legislature.
2. The supplementary rules established by the Subordinate Authority in carrying out the power granted to it by the Legislature.

Delegated legislation is also known as Subordinate, Ancillary, Administrative legislation, and Quasi-Legislation.

HISTORY OF DELEGATED LEGISLATION

The origins of delegated power in India can be traced back to the Charter Act of 1833, during a period when the East India Company was regaining political influence in India. The Act placed legislative powers solely in the hands of the Governor-General-in Council, an executive body. This body was granted the authority to create, amend, or repeal laws and regulations applicable to all individuals, regardless of nationality. In 1935, the Government of India Act was passed, which included a comprehensive plan for delegation. The Committee of Ministers' Powers submitted and approved a report that firmly established the case for delegation of powers and delegated legislation as inevitable in India. Despite the Indian Constitution being based on the separation of powers, a complete separation was not feasible. Therefore, it maintained the sanctity of the doctrine in a modern sense. The Indian Constitution does not prohibit delegation of powers. In fact, there are several provisions where the executive has been granted legislative powers. For instance, the legislative powers of the President under the Indian Constitution are significant. The issue of delegated legislation in India arose during British rule when the controversy on the problem in the West was at its peak. In independent India, resolving the issue of delegated legislative power was primarily a conflict between adopting an English or American solution. The Indian Constitution consists of over four hundred Articles, and it's unsurprising that some solutions were incorporated by its creators. However, these provisions were included because politicians in the Constituent Assembly tended to multiply legal formulations. These issues were minor compared to other significant constitutional issues that were bypassed by the Assembly and

left to future agreement or judicial interpretation. In *Queen v. Burah*, the Privy Council considered the nature and extent of legislative power and its feasibility for delegation. The Council ruled that the Councils of Governor-General were supreme Legislature with ample powers entitled to transfer certain powers to provincial executors. The Privy Council also accepted the transfer of legislative power to the Executive when passing the New Delhi Act of 1912. However, the stance shifted post-independence. The matter of delegated legislation was presented before the Supreme Court in the case of *Jatindra Nath Gupta v. Province of Bihar*, and the court finally expressed its views on the issue in the case of re Delhi Laws Act, 1912. All these opinions agreed that both the parliament and state legislatures possess the power to delegate law-making authority. Yet, there were disagreements regarding the extent of their power to delegate. One perspective held that the legislature should not delegate its essential function of law-making or rule-making and should establish guidelines and policies in the parent act. Conversely, another view argued that legislative power should be delegated to any extent as long as the legislature did not abdicate its legislative function. The court adopted the first viewpoint, asserting that the legislative policy or standard should be explicitly stated in the parent act.

CHARACTERISTICS

Delegated legislation has the following characteristics:

- These laws are created by individuals or bodies to whom Parliament has delegated law-making authority.
- They are made in accordance with the Principal Parliamentary Act, which includes a provision for Subsidiary Legislation and specifies who has the power to do so under that Act.
- It is required in the enabling or parent Act.
- It encompasses numerous administrative details that are crucial for ensuring the successful operation of the Act's provisions.
- It may be administered by Government Departments, Local Councils, or Courts.

In the case of *Devi Das Gopal Krishan v. State of Punjab*, Chief Justice Subba Rao provided another justification for delegated legislation, stating that due to the complex nature of a welfare State, the legislature cannot presumably work out all the details to suit varying aspects of a complex situation. Therefore, it must delegate the working out of details to the executive or any

other agency.

In *D. S. Gerewal v. State of Punjab*, Justice K.N. Wanchoo observed that Article 312 of the Indian Constitution deals with the powers of delegated legislation and stated that there is nothing in the words of Article 312 which takes away the usual power of delegation, which ordinarily resides in the legislature.

In *Raj Narain Singh v. Chairman Patna Administration committee*, it was held that tampering with the policy of an Act amounts to excessive delegation.

In *J.K. Industries Limited v. Union of India*, the Supreme Court explained the limits on delegated legislation by stating that though the Legislature has wide powers of delegation, it cannot delegate uncontrolled power and must confine itself to legislative policies and guidelines.

REASON FOR GROWTH OF DELIGATED LEGISLATION

Several factors contribute to the rapid expansion of delegated legislation in contemporary times. The transformation of governance from a 'police state' to a 'welfare state' has increased the role and necessity of delegated legislation. The reasons for this growth can be outlined as follows:

Parliamentary Time Constraints: As state activities continue to expand, it becomes challenging for Parliament to legislate on every issue due to their extensive workload and the need to legislate on various matters. Parliament, preoccupied with foreign policy and political issues, often only drafts the broad aspects of legislation, leaving the executive or its subordinates to fill in the details according to necessary rules and regulations.

Technical Complexity: As society progresses, matters become more complex and technical. Understanding every topic's intricacy requires expertise in that particular field. Over time, it has been observed that some legislators may only be familiar with politics or a few topics. Therefore, after Parliament frames policies on a topic, it is handed over to a government department or an individual familiar with that topic's technicalities.

Flexibility: Delegated legislation allows for more expedient law-making compared to the slow parliamentary amendment process. For instance, regulations related to police, bank rates, import and export, foreign exchange, etc., can be quickly enacted with the help of executives. Also,

Parliament cannot anticipate every contingency while enacting a law, so delegating tasks to lower bodies can ensure smoother and more efficient operations.

Emergency Situations: In emergencies, quick action is crucial. The legislature may not be equipped to provide urgent solutions in such situations. Delegated legislation is an effective way to address these situations by granting wide powers to the executive during times of emergency and war.

Experimentation: Delegated legislation allows the Executive to experiment with new laws and assess their effectiveness. This approach enables the use of experience and implementation of necessary changes in the application of provisions made by Parliament.

NEED FOR DELEGATED LEGISLATION

Delegated legislation has become an indispensable tool in today's governance, particularly for managing a large and diverse population. It should not only be allowed but also wisely and efficiently used to yield the best results that align with ground realities. As societies become more complex, there is a growing trend towards delegating the legislative process to subordinate authorities. A significant portion of today's legislation is issued by administrative authorities, making the delegation of law-making powers an absolute necessity.

Here are some reasons why delegated legislation is essential for effective and practical governance:

Easing the Legislature's Load: Parliament often finds itself overburdened. By delegating administrative rule-making, the quality of work can be enhanced as the subordinate authority can provide more attention to detail. This delegation can save crucial time for the legislature, which can be diverted towards other important work.

Decentralizing Law-Making: The principle of 'empathy is stronger than sympathy' best explains this. When law-making power is delegated to those who can better understand the needs of the people on the ground, the resulting laws are more likely to be accepted by those governed.

Expertise in Specific Subjects: With increasing advancements in various fields, particularly technology, modern societies have become complex. Delegating tasks ensures that officials with

specific knowledge related to the issue can propose more effective formulations and details.

Flexibility in Legislation: Delegated legislation allows for flexibility in law, enabling Parliament to focus on broad principles and allowing the executive to work out the details as suited to local people.

Experimentation on a Small Scale: Certain laws can be implemented on a small scale by the executive to test their efficacy. This approach helps improve governance as laws are tried and tested at a local level before being implemented nationally.

Considering these advantages, it's clear that delegated legislation should be encouraged and widely used to make governance easier and more effective for such a large population.

In the case of *Arvinder Singh v. State of Punjab*, Justice Krishna Iyer noted that modern administration's complexities are so intricate and filled with details, urgencies, difficulties, and need for flexibility that extensive legislatures may struggle if they must directly handle all legislative business. Therefore, delegating some part of legislative power becomes a necessity for viability.

REFERENCE

1. [Delegated Legislation in India : Analysis and Overview \(ipleaders.in\)](https://www.ipleaders.in/delegated-legislation-in-india-analysis-and-overview)
2. [100002551.pdf \(amu.ac.in\)](https://www.amu.ac.in/100002551.pdf)
3. [Analysis Of The Concept Of Delegated Legislation - iPleaders](https://www.ipleaders.in/analysis-of-the-concept-of-delegated-legislation)
4. [Delegated legislation : pathway to a practical governance - iPleaders](https://www.ipleaders.in/delegated-legislation-pathway-to-a-practical-governance)
5. [Delegated Legislation in India : Analysis and Overview \(ipleaders.in\)](https://www.ipleaders.in/delegated-legislation-in-india-analysis-and-overview)
6. [Delegated Legislation: Meaning, characteristics, need, and criticism \(thelegalquotient.com\)](https://www.thelegalquotient.com/delegated-legislation-meaning-characteristics-need-and-criticism)