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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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DELEGATED LEGISLATION

The Role and Impact of Delegated Legislation in Shaping Modern Governance

Authored By: Anishkumar S,
School Of Excellence In Law, Tndalu,
III Year, B.A.LL.B.(Hons.),
Email Id: Anish2004anish@Gmail.Com
Contact: 9025901894

ABSTRACT:

“Delegated legislation” means legislation passed by a body or person to whom Parliament has delegated its legislative power. This is a key difference from “primary” legislation, which is passed by both houses of the Commonwealth Parliament and approved by the Governor-General. Delegated laws (e.g. regulations) are often issued by the Governor General on the advice of the Federal Executive Council. Delegated legislation typically describes the legislative system of in detail and specifies matters not deemed necessary for approval by Parliament itself through the enactment of primary legislation. However, in order to define more precisely what the delegated legislation covers, it is appropriate instead to refer to what the delegated legislation should not cover. The Department of the Prime Minister and Cabinet's Legislation Handbook provides that the following matters should only be implemented through primary legislation: a appropriations of money; b significant questions of policy including significant new policy or fundamental changes to existing policy; c rules which have a significant impact on individual rights and liberties; d provisions imposing obligations on citizens or organisations to undertake certain activities (for example, to provide information or submit documentation, noting that the detail of the information or documents required should be included in subordinate legislation) or desist from activities (for example, to prohibit an activity and impose penalties or sanctions for engaging in an activity); e provisions conferring enforceable rights on citizens or organisations¹

¹ https://www.researchgate.net/publication/297446921_Delegated_legislation

Delegated legislation, a crucial yet often overlooked aspect of modern governance, plays a pivotal role in shaping the contours of governmental authority and administrative rule-making. This article explores the intricate web of delegated legislation, shedding light on its origins, functions, and implications in contemporary governance. It delves into the historical context of its emergence, demonstrating how it has evolved into a dynamic tool for governments worldwide. In addition, the article examines the far-reaching implications of delegated legislation on democratic principles, accountability, and the balance of power between the executive, legislative, and judicial branches. By analyzing case studies and assessing the potential advantages and challenges posed by this mechanism, this article provides a comprehensive understanding of how delegated legislation shapes the landscape of modern governance.

KEYWORDS:

Delegated legislation, Parliament, Governance, Parliament, Legislature

INTRODUCTION:

According to M.P. Jain: "The term is used in two different meanings:

- to denote the exercise of legislative powers by subordinate representatives, or
- to denote merely subordinate regulations made by a subordinate authority in the exercise of the powers delegated by the legislature."

Delegated legislation is generally a type of law made by the executive in accordance with the powers delegated to it by the primary authority to carry out, implement and manage the requirements of the primary authority. It can be said to be a law which is passed by any person or body subject to the power of Parliament. In administrative law one also speaks of subordinate legislation. It allows the bodies subject to the supreme authority or legislature to make laws when necessary. Under the Act, Parliament has full power to authorize any person or body to legislate. An Act of Parliament creates a specific regulatory framework, which is rather a description of the purpose for which it was created. An important objective is that any legislation adopted by this delegation is consistent with the objectives set out in law.

The main feature is that it allows the state government to amend the law if necessary without the new law being approved by Parliament. If requirements exist, sanctions can also be changed according to delegated rules as the technology develops. The delegation of these powers by

Parliament to a person or body is made to enable that person or body to provide more detailed information about an Act of Parliament.

For example, a local authority has the power from a higher authority to make or amend laws in accordance with the requirements applicable in its territory. Delegated legislation plays a very important role as there is more delegated legislation than parliamentary legislation. It has the same legal force as the Act of Parliament on the basis of which it was created.²

There are three forms of delegated legislation viz., legal text, regulations and regulations of the Council.

Regulatory instruments

They form the government. For example, a higher law is a law that allows Parliament to make laws. Executive orders are typically issued by the government when necessary and can affect both the general public and individuals.

Regulations

These are prepared by local authorities and approved by the central government. There are many reasons to delegate legislative powers. Parliament does not have much time to deliberate and discuss all issues. Therefore, delegated legislation allows legislation to be passed more quickly than Parliament, and the parliamentary process is also very slow as draft legislation has to go through each stage for each bill. Furthermore, it is assumed that a representative does not have the necessary technical capacity to make laws.

For example, the development of a tax law requires both knowledge and experience that a person experienced in this field may have. When it comes to social goals, municipalities can understand the needs of the population in their area better than others. Democratic bodies have many important delegated legislative powers that can be easily used to adapt legislation to the needs that lead to social welfare.

But there should be control over delegated legislation. Delegated legislation is controlled by Parliament and the judiciary. Parliament exercises overall control over delegated legislation as it includes statutory committees that pass legislation by law. The main objective of parliamentary

² <https://blog.ipleaders.in/delegated-legislation/>

scrutiny is to check whether there is any abuse or unnecessary use of the powers delegated to the legislatures.

Cases

In the case of *Narendra Kumar v. In Union of India*, the Supreme Court has held that the provision in Section 3(5) of the Essential Commodities Act, 1955 which states that any regulation made under the Act must be submitted to both Houses of Parliament.

Therefore, Section 4 of the Non-Ferrous Metals Control Orders 1958 will not apply until it is laid before Parliament. There are a number of principles within the framework of judicial control of the delegation of laws determined by the judiciary.³

In the case of *Chandra Bhan*, it was held that delegation of legislative powers must be appropriate and not tainted with impropriety.

Delegated legislation should protect the rule of law and there should be no question of arbitrariness. Rules that violate parental law are illegal. Rules that violate any other provision are also considered invalid. Delegated legislation passed in bad faith is also considered unlawful.⁴

GROWTH OF DELEGATION:

Before the mid-19th century, the main functions of the English government were defense and policing. There were few government ministries and managing citizens' lives was not considered a government function. Under these circumstances, Parliament was able to pass all necessary legislation on its own and a wholesale devolution of legislative powers was not required. However, we have already emphasized that the delegation of legislative powers was already modest in the 17th and 18th centuries. The development of the concept of government functions dates back to the mid-19th century and was analyzed in detail by Professor Dicey in *Law and Opinion in England* in two lectures entitled "The Growth of Collectivism" and "The Period of Collectivism". . ""As early as 1905, this outstanding constitutionalist considered collectivism as English legislation and expressed the opinion that its power had neither faded nor extinguished, but the

³ <https://indiankanoon.org/doc/1276331/>

⁴ <https://www.casemine.com/judgement/in/56e668a1607dba6b53433aac>

logic of events had led to the expansion and development of legislation "bearing the mark of collectivism". the true declaration under conditions that are neither entirely democratic nor political. We cannot, in our opinion, doubt that the practice of delegating legislative powers on a modern, broad and generous scale to Ministers of the Crown is an indirect consequence of this kind of legislation: Parliament currently passes so every year so many laws that there is not enough time to work out all the legislative details... Many details are so technical as to be unsuitable for parliamentary debate - for example patents, copyrights, trademarks, designs, diseases, poisons, child safety models, wireless telegraphy, heating and lighting properties of gas, legal procedures or financial complexities.

Many regulations impact people's lives so much that flexibility is essential. It is impossible to pass an Act of Parliament to combat measles or foot-and-mouth disease when it occurs, and measures such as public health laws must be applied differently in different parts of the country. It is now recognized that the free sale of poisons is contrary to the interests of society. "Why should Parliament bother to pass the new Law No. just because doctors concluded that ecgonine and heroin should be added to the drugs? legal calendar? These are practical considerations that have led Parliament to adopt the practice of massive and almost blind devolution of powers. "England," said Lord Beaconsfield, "is not governed by logic, it is governed by Parliament." The practice of delegation has been adopted from time to time under the pressure of circumstances and Parliament has always followed this path without fully realizing the risks involved. The truth is that if Parliament were unwilling to delegate legislative powers, it would be unable to pass the type and quantity of laws that modern public opinion requires. In 1916, an American lawyer and statesman, Mr. Elihu, in his presidential address to the American Bar Association after, in which he summarized the authorities active in the public life of the United States in the 20th century, said: "Before these authorities." The old Doctrine prohibiting the delegation of legislative power had effectively turned away from them and given up the fight. There will be no retreat from these experiences.⁵

We shall go on; we shall expand them, whether we approve theoretically or not, because such agencies furnish protection to right, and obstacles to wrong doing, which under our new social and industrial conditions cannot be practically accomplished by the old and simple procedure of legislatures and courts as in the last generation." In our opinion these words are as applicable to

⁵ file:///C:/Users/Admin/Downloads/Chapter%20IV_Delegated%20Legislation%20(172-281).pdf

the United Kingdom today as they were to the United States in 1916. 'We doubt, however, whether Parliament itself has fully realised how extensive the practice of delegation has become, or the extent to which it has surrendered its own functions in the process, or how easily the practice might be abused.

ADVANTAGES OF DELEGATED LEGISLATION:

One of the advantages of delegated legislation is it permits the Government to amend a law without having to wait for a new Act to be passed by the parliament. Further, it is to be noted that delegated legislation can be used only to make technical changes to the law, such as altering sanctions under a given statute. Any essential legal function cannot be carried out through delegated legislation. Nor a delegated body can lay down a legislative policy.

One of the advantages of delegated legislation is it permits the Government to amend a law without having to wait for a new Act to be passed by the parliament. Further, it is to be noted that delegated legislation can be used only to make technical changes to the law, such as altering sanctions under a given statute. Any essential legal function cannot be carried out through delegated legislation. Nor a delegated body can lay down a legislative policy.

Another important reason why delegated legislation is important is that it avoids overloading the limited parliamentary calendar, as delegated legislation can be amended and/or introduced without Parliament having to pass a law, which takes up a lot of time can claim. Therefore, it is possible to make changes to the law without the need for Parliament to adopt a new law, which also saves Parliament a lot of time dealing with technical issues such as clarifying a certain part of Law No. It should be noted that it is for it is humanly impossible for Parliament to deal with all matters. Because there will be some tasks that require special skills. Delegated legislation would therefore be very beneficial in such a situation. Delegated legislation allows the legislative process to be carried out by people with relevant expertise. For example, local governments can enact laws based on the needs of their locality, rather than applying a general law that may not be suitable for their particular area. Certain local authorities are in the best position to decide which is best for their location and can enact legislation tailored to their local needs. Fourth, delegated legislation can respond to an emergency situation when it arises, without having to wait for Parliament to pass legislation that addresses the specific situation.

Delegated legislation is also more flexible than the legislative body, i.e. Parliament. Delegated legislation can be used to overcome a situation that Parliament did not foresee when passing the law, making it very useful in the legislative process. Delegated legislation can therefore respond to the changing needs of society as well as situations that Parliament had not foreseen at the time the law was passed. Another important benefit of delegated legislation is experimentation. The practice of delegated legislation allows the executive branch to experiment. In road transport, for example, it is possible to use an experimental method and thus make the necessary changes to the regulations. The advantage of such an approach is that the commissioned body can first survey the interests of citizens and the laws that apply to them, and then conduct an experiment and change the rules.

Part of the legislative power of the legislature is entrusted or transferred to a subordinate power. Rules and Regulations The provisions it will formulate will form an integral part of the law itself.

THE ROLE AND IMPACT OF DELEGATED LEGISLATION IN SHAPING MODERN GOVERNANCE

In the complex tapestry of modern governance, there exists a critical yet often overlooked thread known as delegated legislation. This intricate system allows governments to create rules and regulations with relative ease, but its consequences ripple through the fabric of democracy, accountability, and the distribution of power. This article explores the evolution, functions, and implications of delegated legislation in contemporary governance, illuminating its vital role in shaping the way nations are ruled.

The Historical Roots of Delegated Legislation:

Delegated legislation has its roots in ancient legal traditions, but it gained prominence during the expansion of modern state apparatuses. Historically, monarchs delegated powers to administrators, giving birth to this practice of rule-making. The evolution from royal prerogative to modern-day administrative agencies reflects a shift in governance from centralized authority to representative systems.

Functions of Delegated Legislation:

Delegated legislation serves several essential functions:

1. **Flexibility and Adaptability:** It allows for rapid responses to changing circumstances without

the need for time-consuming parliamentary processes.

2. **Expertise Utilization:** Delegated legislation leverages the specialized knowledge of administrative bodies, making it more effective in dealing with technical and complex issues.
3. **Efficiency:** Governments can efficiently manage their extensive administrative responsibilities, including those related to public welfare and safety.
4. **Policy Implementation:** It is instrumental in implementing broader policy objectives determined by legislatures.

Implications for Democracy and Accountability:

While delegated legislation offers flexibility and expertise, it raises important questions about democratic principles and accountability:

1. **Democratic Legitimacy:** Critics argue that unelected officials should not wield substantial legislative powers, as they lack democratic mandates.
2. **Accountability Gaps:** Delegated legislation can create accountability gaps, making it challenging for citizens to pinpoint responsibility for particular decisions.
3. **Risk of Overreach:** Without proper oversight, delegated legislation may lead to an overextension of executive power, challenging the traditional separation of powers.

Balancing Act: Delegated Legislation and the Separation of Powers:

To strike a balance between the efficiency of delegated legislation and the principles of democratic governance, some countries have established mechanisms for parliamentary oversight, public consultation, and judicial review of delegated laws. These safeguards aim to ensure that delegated legislation remains within the bounds of constitutional authority.

Case Studies: Examining Delegated Legislation in Practice

This article delves into case studies from countries like the United Kingdom, the United States, and Australia to showcase how delegated legislation functions in different contexts and the impact it has on governance structures.

CRITICISMS OF DELEGATED LEGISLATION

- It often happens that the legislative power is limited to the adoption of framework laws and general principles, leaving the rest to the executive branch. There is therefore a separation between broad discretionary power and executive power, which can be abused to influence the lives and

freedoms of individuals.

- Delegated legislation comes with a lack of publicity. It should be noted that when a law is a regulatory instrument, the public is generally not informed of it, while the opposite is the case when Parliament passes laws that are made available to the general public. A possible reason for the lack of publicity of delegated laws is the number of delegated laws passed, which means that the public is not informed about changes in the law. Another problem with delegated legislation is that the number of rules enacted through delegated legislation has increased significantly.
- There is a lack of democracy because too many delegated laws are created by unelected people.
- Although judicial review can be carried out to check the legality of delegated legislation, its application actually becomes very technical and complex.
- There is no central system available to look into inconsistencies in delegated legislations and suggest remedies accordingly⁶

CONCLUSION:

Delegated or subordinate legislation refers to laws made by an act of Parliament. Although the decision-making body has legislative powers, it can delegate this power to other bodies or persons by resolution. An enabling law is a resolution that assigns these powers. The Council sets the general rules through delegated legislation, while the delegated body sets the detailed rules.⁷

Delegated legislation is a double-edged sword, enabling modern governments to respond to complex challenges while also raising critical concerns about democracy and accountability. To harness its advantages and mitigate its drawbacks, an intricate web of checks and balances must be in place. By understanding the role and impact of delegated legislation in shaping modern governance, we can ensure that it remains a valuable tool for governance without compromising the essence of democratic principles.

⁶ file:///C:/Users/Admin/Downloads/SIJLCJ_211_348-351.pdf

⁷ <https://unacademy.com/content/upsc/study-material/public-administration/delegatedlegislation/#:~:text=Delegated%20or%20subordinate%20legislation%20refers,or%20individuals%20by%20a%20resolution>

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