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# **DELEGATED LEGISLATION IN INDIA AND USA:** **A COMPARATIVE STUDY**

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## **Abstract**

The expectations of having a welfare state, overburdens the Legislature to conduct their multifarious activities. As per the Separation of Powers the legislature delegates or shares certain powers in the executive wing of the government. Such delegation has been a deeply contested issue to India's democracy. Although, the need for delegated legislation emerged to avoid overburdening the Parliament, give specified knowledge in emergent situations and have flexible enactment. The project delves into flagging the various defects secondary legislation forms in the modern welfare state, while critiquing the constitutionality of such a power. In comparison, the situation in the United States seems to take a fresher, more liberal approach. Even though both countries exercise delegated with a limited scope. India places different, much stricter mechanisms of scrutiny to ensure the validity of the law. The US confers its 'sweeping clause', to execute laws that activate necessary federal powers. The Rule Making procedure in US lays implicit guiding principles which strike a balance between the delegated authority and its superior. A balance, India could benefit from if applied in its own context.

## **Chapter 1: Introduction**

*"There would be an end to everything, were the same man or the same body, whether of the nobles or the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions and of trying the causes of individuals."*

*-Baron de Montesquieu*

While we are living in this 21st century it has become easier for us to view the surrounding which is gradually taking the course of being welfare and service provided by nature thereby overtaking its nature of individualism. A welfare state welcomes a wide growth in a government's authority which stands as the essence of any welfare state. Therefore, for such an expansion in the authority of the government and rising complexities of administrative functions, coupled with the requirement of specialized knowledge in certain areas, there is a requirement of delegation of

legislative powers, function, and authority in order to ensure effectiveness in the administration procedure.

Delegated legislation is the only practical tool today to govern a huge and diverse population. As modern society becomes more complex, there is a growing trend of delegation of the legislative process to the subordinate authorities. A large chunk of the legislation today is issued by the administering authorities and hence delegating law-making powers has become an absolute necessity. Delegated legislation can manage an “emergency situation” as it immediately emerges without waiting for an Act to be passed through Parliament to solve the specific circumstance. If we take for an instance, situation of Covid 19 has exposed a collapsing system and has revealed to the people the inefficiencies of their government, both the Central and the State governments have failed their electorate. The pandemic which claimed the lives of many people and hence any delay could have been lethal, it was vital that quick decisions were made, formulated, as well as implemented, and hence delegated legislation during such time is necessary to ensure that life-saving policies are quickly enforced and maximum lives are saved.

## **Chapter 2: Meaning, Origin and Scope of Delegated Legislation**

### **2.1 Definition/Meaning of Delegated Legislation**

The term delegated legislation is nowhere expressly defined under any law or statute. The Black's Law Dictionary defines the word delegation as “the act of entrusting another with authority by empowering him/her to act as an agent or representative.”<sup>1</sup> The dictionary further defines ‘Doctrine of Delegation’ as “The principle restricting the Legislature’s ability to transfer its legislative power to the executive branch based on the separation of powers.”

It can also be said as “the act of making or commissioning a delegate which means parting of powers by the persons who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself.”<sup>2</sup>

The Supreme Court has also explained the concept of delegation as the entrusting, by a person or body of persons, of the exercise of a power residing in that persons or body of persons, to another person’s or body of persons, with complete power of revocation or amendment remaining in the

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<sup>1</sup>Black's Law Dictionary, 8<sup>th</sup> Edition.

<sup>2</sup>P. Ramanatha Aiyar's, The Law Lexicon, 3<sup>rd</sup> Edition.

grantor or delegator.<sup>3</sup>

Some jurist and author have also defined the term delegated legislation. According to Sir John Salmond, “Subordinate legislation is that which proceeds from any authority other than the sovereign power.”

Famous author M.P. Jain<sup>4</sup> has explained the term in two ways:

- i. Exercise by subordinate agency or agency that is lower in rank to legislature delegated to it by the legislature,
- ii. The secondary rules made by the subordinate authority in the execution of the power bestowed on it by the legislature.

According to Justice P.B. Mukherjee, it is an expression which covered a multitude of confusion. He viewed it as an excuse for the legislature, a shield for executors.

Therefore, it can be said that delegated legislation is nothing but a secondary or subordinate legislation in which the legislature confers law/rule making power to the executive wing to implement and administer it in a fruitful way. The primary legislation which confers the power is known as the “Parent Act” and the secondary or ancillary legislation includes bye-laws, circulars, notifications, orders, regulations, rules, schemes etc.

## 2.2 History and Evolution of Delegated Legislation

In a democratic State, where there is separation of powers between the legislature and the executive, the concept of delegated legislation is a regular feature. It can be said that in 1539, King Henry VIII of England was conferred with extensive powers to legislate by proclamations and executive laws under the Statute of Proclamations.<sup>5</sup>

Liberty is the first and foremost ideology of the people of the United States. They believe in freedom and for that freedom to sustain, they rely on the doctrine of separation of powers between the judiciary, the legislature, and the executive. In the United States of America, the rule against

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<sup>3</sup>Gwalior Rayon Silk Manufacturing (wvg.) Co. Ltd. V. The Assistant Commissioner of Sales Tax.

<sup>4</sup> M.P. Jain, Indian Constitutional Law, LexisNexis, 8th Edition.

<sup>5</sup>Agricultural Market Committee v. Shalimar Chemical Works Ltd., AIR 1997 SC 2502.

delegation of legislative power is basically based on the doctrine of separation of powers and its necessary corollary 'delegatus non potest delegare.' This means that a delegated body, organ, or individual cannot further delegate his power.

The roots of delegated legislation in India can be traced back to the pre-independence era. Till 1949, the Privy Council was the highest Court of Appeal and catered to appeals from India. The then Governor-General-in Council was vested with the administrative powers under the Charter Act of 1833. The initial plan of delegation or powers of delegation evolved or discussed under the Government of India Act, 1935.

### 2.3 Types of Delegated Legislation

The goal for achieving a welfare State, the legislature must confer various kinds of rule-making power to the executive body. These rule-making powers are classified as below<sup>6</sup>:

- i. Skeleton Legislation – The main function of the delegated legislation is called as “power to fill up the details.” This means that after a legislative power has been conferred to the executive body under a statute by the legislature, the executive shall work out details within the framework of the legislative statute laid down in the plenary enactment. This was held in *Harishankar Bagla v. State of Madhya Pradesh*<sup>7</sup>, where the Apex Court justified the broad delegation of legislative powers to the executive authorities under the Essential Supplies Act and stated that ‘the ambit and character of the Act is such that the details of that policy can only be worked out by delegating them to a subordinate authority within a framework of that policy.’ The power to fill up the details is known as ‘Skeleton Legislation.’ It is used to ‘denote the broad outlines of a particular scheme found in an Act of which details are to be filled in later by the administrative orders of experts.’<sup>8</sup>
- ii. Inclusion and Exclusion – Exemption of laws (inclusion and exclusion) can also be delegated. It means that power to exempt someone from implementation of the act can be delegated. Certain criteria are given by the Parliament to be considered in order to exercise this power. The Apex Court has analyzed the power of inclusion in the case of *Edward Mills C. Ltd. V. State of Ajmer*<sup>9</sup> in which the scope of the power of inclusion in the light of Minimum Wages Act, 1948 was challenged. The Court held that the power of the

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<sup>6</sup> Cecil T. Carr, *Delegated Legislation: Three Lectures*, Cambridge University Press, April, 2016.

<sup>7</sup>AIR 1954 SC 465.

<sup>8</sup>*Prag Ice & Oil Mills v. Union of India*, (1978) 3 SCC 459.

<sup>9</sup>AIR 1955 SC 25.

executive body to add certain types of employments to the Schedule as delegated power which is not unconstitutional in nature. In contrary to the above scenario, in the case of *Jalan Trading Co. v. Mill Mazdoor Union*<sup>10</sup> the Apex Court held that the appropriate government by virtue of Section 36 of the Payment of Bonus Act, 1965 has been invested with the power to exempt an establishment from the operation of the Act is valid and does not confer any excessive authority and was not unconstitutional.

- iii. **Removal of Difficulty Clause** – Removing difficulties while implementing the policy can be delegated. Most of the implementation are procedural in nature. If there is any difficulty, executive authorities can make rules, laws, bye-laws etc. Under English Administrative Law, the power of removal of difficulty clause is known as ‘Henry VIII Clause.’ He misused the power to remove in such a way that the clause was named after him. In every enactment, he used this power and changed the substantive part of the law. So, Judiciary came up with certain restrictions to limit this power. This power to remove was only to be used in case of difficulty in implementation, no substantive part can be changed. That means it is only related to procedural aspect and not substantive aspect.
- iv. **Excessive Delegation** – It is also known as non-permissible delegation or power of bypassing. It means excess use of power by the executive authority from what they have been delegated. The Supreme Court has also discussed its constitutionality in *Harishankar Bagla v. State of Madhya Pradesh*<sup>11</sup> and held that it is not unconstitutional. There are some powers which cannot be delegated like Amendment of an Act cannot be delegated, creating of new policy or statute, repealing of clauses, taxing power, criminalization of an act, Fixing the minimum and maximum punishment etc.

## 2.4 Objective and Significance of Delegated Legislation

Delegated legislation is the only practical tool today to govern a huge and diverse population. It should not only be permissible but should be wisely and efficiently utilized to deliver the best results suited to ground realities. Reasons for delegation:

- i. **Overburden** – As many legal areas are emerging because of technical development, scientific development, globalization, modernization, liberalization, industrialization, and development in International Law further developing the rights of individual. Also, the

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<sup>10</sup>AIR 1967 SC 691.

<sup>11</sup>AIR 1954 SC 465.

- country is developing from State to welfare State. That is why nowadays, a structure is being prepared where delegated power is given to the executives for making the laws.
- ii. Time constraint – Law making requires adequate time and efforts but the legislators or parliamentarians are often involved in various political debates and discussions during the working sessions of the parliament which leaves no scope for them to devote adequate time in the law –making process.
  - iii. Technicalities – It may arise in certain areas at the time of implementation. To meet the technicalities, this delegation is required. There are certain areas where law in such part can be made by the person having expertise in that area. For example, mining has different types like coal and aluminum. So, different kinds of technicalities may arise in both areas. Whenever the laws are applied to a particular subject-matter, there must be some changes required but every time legislature cannot sit and make laws specifically. Then Central government will delegate the power to certain executives to make separate laws for meeting the technicalities.
  - iv. Flexible – Law always follows the change in society. Whenever change happens, every time we cannot knock the door of legislature to change the laws. So, there is a need of some flexibility in laws. For example, in case of Reverse Repo Rate, for flexibility, delegated power must be given to executives. We cannot follow the same rate throughout the entire financial year.
  - v. Emergencies – Certain areas of law requires experiments. If delegated power is in hand of executives, they can make the law and carry out necessary experiments to understand the working of the law and its impact on the people. In case of failure, they can take the law back and if it succeeds then it can be implemented as law effectively.

## **Chapter 3: Constitutional Analysis of Delegated Legislation in India and USA**

### **3.1 Constitutionality of Delegated Legislation in India**

Delegated legislation in India refers to the process by which the legislative power is delegated by the Parliament or State Legislatures to various executive authorities, such as government departments and administrative agencies, to make rules and regulations for the implementation of laws. The constitutionality of delegated legislation in India is a matter that has been subject to

judicial scrutiny and interpretation over the years. The Supreme Court of India, on various occasions, has upheld the constitutionality of delegated legislation, recognizing its necessity in the modern administrative framework. The Court has held that if the legislative policy and guidelines are provided in the enabling Act, the delegation of subsidiary or ancillary powers is valid<sup>12</sup>. Here are some key points to consider regarding the constitutionality of delegated legislation in India:

- i. **Legislative Authority:** The Indian Constitution grants legislative authority to the Parliament and State Legislatures under Article 245. Delegated legislation should not encroach upon the primary legislative powers of these bodies. As per Article 246 of the Indian Constitution, the Apex Court has interpreted that power to delegate is limited as essential legislative functions cannot be delegated. Any law made by an executive authority should be in line with the framework provided by the Constitution and should not go beyond the scope of the parent legislation.
- ii. **Source of Power:** The Constitution allows for delegation of legislative power to other bodies under Article 248, List III (Concurrent List), and List II (State List) of the Seventh Schedule. The enabling provision in the parent legislation must be clear and unambiguous regarding the delegation of authority.
- iii. **Procedural Safeguards:** Delegated legislation must adhere to procedural safeguards. It should be made through a transparent and accountable process, ensuring that affected parties have an opportunity to participate in the rule-making process. In many cases, delegated legislation is subject to parliamentary or legislative oversight.
- iv. **Subject Matter:** Delegated legislation must be confined to the subject matter and purpose of the parent legislation. It should not introduce new or unrelated provisions that are beyond the scope of the enabling law.
- v. **Reasonable Restrictions:** Delegated legislation should not violate the fundamental rights guaranteed under Part III of the Indian Constitution. Any restrictions imposed by delegated legislation must be reasonable and in the public interest.
- vi. **Ultra Vires Doctrine:** Courts in India have the power of judicial review to ensure that delegated legislation does not exceed its authority or violate constitutional principles. If a rule or regulation is found to be ultra vires (beyond the delegated power), it can be struck down by the courts.

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<sup>12</sup> Yashomati Ghosh, Textbook on Administrative Law, LexisNexis, 1<sup>st</sup> Edition, 2016.

- vii. **Sub-delegation:** Delegation of legislative power should not be further sub-delegated to other authorities unless expressly authorized by the parent legislation. Sub-delegated authorities must also exercise their powers within the limits defined by the parent law.
- viii. **Accountability:** The executive authorities responsible for making delegated legislation are accountable to the legislature and, ultimately, the people. They can be called upon to justify their actions and decisions.
- ix. **Judicial Review:** The judiciary plays a crucial role in determining the constitutionality of delegated legislation. Courts have the power to review and strike down rules and regulations that are inconsistent with the Constitution or the parent legislation.

### **3.2 Constitutionality of Delegated Legislation in US**

In the United States, delegated legislation refers to regulations and rules created by administrative agencies, also known as federal agencies or executive agencies. These agencies derive their authority to create such regulations from Congress through statutes or laws. The constitutionality of delegated legislation in the U.S. is generally accepted, but it is subject to certain constitutional principles and limitations. The key constitutional principles related to delegated legislation in the U.S. include:

- i. **Separation of Powers:** The U.S. Constitution establishes a system of separation of powers among the three branches of government: the legislative, executive, and judicial branches. Delegated legislation is a way for Congress to delegate some of its lawmaking authority to the executive branch (agencies). However, the Constitution sets limits on this delegation to prevent the concentration of too much power in one branch.
- ii. **Non-delegation Doctrine:** While the Constitution allows Congress to delegate authority to agencies to make rules and regulations, the delegation must be specific and provide clear guidelines or standards for the agency to follow. The non-delegation doctrine holds that Congress cannot delegate its essential legislative functions to agencies without providing sufficient guidance. Courts have been cautious about striking down delegations, but they do examine them to ensure they meet certain constitutional standards.
- iii. **Due Process:** Administrative agencies must follow due process when creating and enforcing regulations. This means that individuals and entities affected by agency regulations are entitled to notice and an opportunity to be heard. Due process is a constitutional requirement to protect the rights of individuals.

- iv. **Judicial Review:** Courts have the authority to review the constitutionality and legality of agency regulations. This ensures that agencies do not exceed their delegated authority or violate constitutional rights. Courts may invalidate regulations that they find to be unconstitutional or not authorized by law.
- v. **Congress's Oversight:** Congress has the power to oversee and review the actions of administrative agencies. This includes the ability to pass legislation that might change or revoke the agency regulations if Congress believes that an agency has overstepped its authority.

### 3.3 Separation of Power and Delegated Legislation

Separation of powers and delegated legislation are two important concepts in the field of constitutional and administrative law, often associated with the functioning of government and the distribution of powers in a democratic system. The separation of powers is a fundamental principle of many democratic systems, including the United States and many parliamentary democracies like India. It refers to the division of government authority and functions into three separate branches<sup>13</sup>:

- a) **Legislative Branch:** This branch is responsible for making and passing laws. It includes the parliament or congress, which consists of elected representatives.
- b) **Executive Branch:** This branch is responsible for implementing and enforcing the laws. It includes the government, headed by the executive leader (e.g., the president or prime minister) and various administrative agencies.
- c) **Judicial Branch:** This branch is responsible for interpreting and applying the laws. It includes the judiciary, which consists of courts and judges.

According to the separation of power theory, the work of law-making and framing rules, regulations, and bye-laws rest with the legislature, while the part of executing these frameworks has been entrusted to the executive. The separation of power theory aims to prevent despotism. The idea behind the separation of powers is to prevent the concentration of power in a single branch as it may result into abuses of power and anarchism. Each branch has distinct functions and powers, and there are checks and balances in place to ensure that no one branch becomes too powerful.

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<sup>13</sup> M.P. Jain, Indian Constitutional Law, LexisNexis, 8th Edition.

On the other hand, delegated legislation, also known as subordinate or secondary legislation, refers to the process by which a legislative body (such as a parliament or congress) delegates some of its lawmaking authority to another body or entity. This delegated authority allows the other body, often an administrative agency or executive body to create detailed rules, regulations, or bye-laws within the framework of the overarching law passed by the legislature. Delegated legislation is necessary for several reasons, including the need to adapt to changing circumstances, technical complexity, and the efficiency of governance.

The separation of powers and delegated legislation are connected in a way that they involve a balance of power between different branches of government. Delegated legislation is a way for the executive branch to exercise legislative functions, which is why it's subject to checks and balances to ensure that it doesn't undermine the principle of separation of powers. In many democracies, the legislative branch grants the authority for delegated legislation in enabling acts but retains the power to review and, if necessary, revoke or amend such delegated rules. This ensures that the executive branch does not overstep its bounds and remains accountable to the legislature and, by extension, to the people.

In the leading case of *Panama Refining Co. v. Ryan*<sup>14</sup>, US Supreme Court was required to deal with the constitutionality of the legislation conferring broad delegation of law-making powers to the executive. In the said case, constitutionality of section 9(c) of National Industrial Recoveries Act, 1933 was challenged on the ground that the US President has passed the provision by exercising unconstitutional delegation of legislative powers. Thereafter, US Supreme Court analyzed the scope of delegation of legislative powers under section 9(c) and held that the provision was unconstitutional because it failed to lay down the rules for the guidance of state legislatures or state officers. It was further observed that the fact that delegation was made to the president and that he will act for what he believes to be public good is not a justification to validate the delegation of legislative powers in the absence of legislative policy. It is a constitutional imperative for the legislature to lay down the legislative policy and same power cannot be conferred to the President for determining the policy in the way he pleases.

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<sup>14</sup> 293 U.S. 388.

### 3.4 Comparative Analysis of Delegated Legislation in India and USA

The assessment to the fact that whether delegated legislation in the United States is better than India, or vice versa, is a subjective matter and depends on various factors and perspectives. Both countries have their own legal systems, political structures, and historical contexts, which influence the way delegated legislation is handled. Evaluating the effectiveness and fairness of delegated legislation requires a deep understanding of each country's legal and political framework. Here are some key points to consider when comparing delegated legislation in the USA and India:

- i. **Legal Systems:** - The United States follows a common law legal system, where case law plays a significant role in interpreting and shaping the law. Delegated legislation in the USA often involves administrative agencies implementing and interpreting laws. India follows a common law legal system as well, but its approach to delegated legislation may differ in some respects due to its unique historical and constitutional context.
- ii. **Constitutional Framework:** - The United States has a federal system with separation of powers between the federal government and individual states. This affects the delegation of legislative authority and the role of federal agencies. India has a federal system too but since it follows a quasi-federal model, therefore, delegated legislation is subject to the provisions of the Indian Constitution.
- iii. **Parliamentary vs. Presidential System:** - India follows a parliamentary system of government where the executive branch is drawn from the legislature (Parliament). This can affect the accountability of delegated legislation whereas, in the United States, it works on a presidential system, where the executive branch is separate from the legislative branch. Therefore, agencies are independent to make and enforce their own regulations.
- iv. **Accountability and Oversight:** - The effectiveness of delegated legislation often depends on mechanisms for accountability and oversight. Both countries have their own processes for reviewing and challenging regulations.
- v. **Complexity and Volume:** - The volume and complexity of delegated legislation can vary greatly between the two countries due to differences in the size of government, regulatory needs, and the legal culture.
- vi. **Judicial Review:** - Both countries have systems of judicial review that allow courts to assess the validity of delegated legislation but the extent and nature of judicial review can vary depending upon case to case.

- vii. **Public Participation:** - The extent to which the public is involved in the process of making delegated legislation can differ between the two countries as In India, extent and nature of delegated powers is decided by the legislature itself whereas in USA, Executive bodies/ agencies are separate from legislative bodies and they can themselves decide the nature and extent of the delegated legislations.

## **Chapter 4: Principles to Control Delegated Legislation in India and USA**

Lord Atkin has propounded that, ‘Power tends to corrupt and absolute power corrupts absolutely.’ Going by this principle there should be some restrictions and limitations to every power delegated or, otherwise it would be misused<sup>15</sup>. Therefore, we need to study different principles to control delegation of power given to the executive authorities. There are three different mechanisms to control the administrative rule making powers. They are<sup>16</sup>:

- i. Parliamentary Control
- ii. Judicial control

### **4.1 Parliamentary Control**

In India the first and foremost controlling authority of the delegated legislative powers is the parliament. The Constitution of India provides the laws making power to the legislature or the legislative body. This law-making power in certain cases is given to the executive authorities by the legislature with respect of achieving a welfare State. The legislature does not only have the right to delegate power but also has the duty to oversee the functions of their agents i.e., executives and ensure that they are working in accordance with the will of the Parliament. There are two stages where the control over delegated legislation is exercised. They are:

**Pre-enactment control:** - We all know that the law-making power vests with the legislature. When this power is utilized by the legislative body i.e., when the legislature intends to make a new law which is also called as a parent statute, it is done by drafting of a Bill of that concerned statute. This is the time when the pre-enactment control takes place. The Parliament should always have the direct control over the nature and scope of the powers delegated as the rule is deemed to be

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<sup>15</sup> Cecil T. Carr, *Delegated Legislation: Three Lectures*, Cambridge University Press, April, 2016.

<sup>16</sup> Yashomati Ghosh, *Textbook on Administrative Law*, LexisNexis, 1<sup>st</sup> Edition, 2016.

fundamental in the context of the parliamentary form. The limitation to this control is lack of time and involvement of the legislative bodies. There is always a conflict amongst the legislatures. The legislative authorities while dealing with the political issues often indulge in baseless discussions which results in depriving the nation from important legislative debates. Therefore, the concerned legislative body who is indulged in drafting of a new bill should also draft a memorandum with a separate clause on delegated legislation for the members of the Parliament to review then and there only.

Post-enactment control: - This means that the control is done after a law or statute is made or passed by the Parliament. It is done by two processes, i.e., Direct control and Indirect control. Direct control is done through the laying down procedure and Indirect control is done by the scrutiny of parliamentary committees. The rules framed under a new statute should be scrutinized by the parliament. It is their duty to examine and find any irregularities or ambiguity in the said law.

## 4.2 Judicial Control

Judicial control over delegated legislation is an important aspect of the separation of powers in democratic systems of government. Delegated legislation refers to laws or regulations that are made by an authority or body under powers delegated to them by the primary legislature (usually the parliament or congress). These regulations are essential for the efficient functioning of government, but they also need to be subject to judicial oversight to ensure they are consistent with the constitution and do not exceed the authority granted to the delegated body. Judicial review is the tool through which the judiciary can exercise control over delegated legislation<sup>17</sup>. It can scrape off the legislation which it finds arbitrary, unreasonable, or unconstitutional. Here are some ways in which the judiciary exercises control over delegated legislation:

- i. **Ultra Vires Review:** The most common form of judicial control is to determine whether the delegated legislation is "ultra vires," which means beyond the powers granted by the primary legislation. If a court finds that a regulation exceeds the authority granted by the enabling statute, it can declare it void.

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<sup>17</sup> Yashomati Ghosh, Textbook on Administrative Law, LexisNexis, 1<sup>st</sup> Edition, 2016.

- ii. **Substantive Review:** Courts can also review delegated legislation for its substantive content to ensure it is not arbitrary, unreasonable, or irrational. This is especially important when delegated legislation impacts individuals' rights or interests.
- iii. **Procedural Review:** The judiciary may also review the procedures followed by the delegated authority when making regulations. If the procedures prescribed by the enabling statute are not followed, the court may declare the regulation invalid.
- iv. **Constitutional Review:** Delegated legislation can be challenged on constitutional grounds if it violates constitutional principles, such as fundamental rights or the separation of powers. The judiciary plays a crucial role in upholding the supremacy of the constitution.
- v. **Error of Law Review:** Courts can review delegated legislation to ensure that it has interpreted the primary legislation correctly and there is no error of law.
- vi. **Judicial Review of Reasonableness:** Courts can review the reasonableness of delegated legislation. If a regulation is found to be unreasonable, the court can declare it invalid.
- vii. **Void for Vagueness Doctrine:** Courts may declare delegated legislation void if it is too vague or ambiguous to be enforceable. Citizens have the right to understand the laws that govern them.
- viii. **Human Rights Review:** In many countries, courts have the authority to review delegated legislation for compliance with human rights standards and principles.
- ix. **Remedies:** Courts can provide remedies such as injunctions or declarations of invalidity when delegated legislation is found to be unlawful.

## **Chapter 5: Criticism and Conclusion**

Delegated legislation is a process by which government authorities or bodies are granted the power to make laws or regulations under the authority of an existing Act of Parliament or Congress. While delegated legislation can be an efficient and practical way to address the complexities of modern governance, it is not without its criticisms and drawbacks. Here are some common criticisms of delegated legislation: -

- i. **Lack of Parliamentary Scrutiny:** - One of the main criticisms of delegated legislation is that it often does not receive the same level of scrutiny as primary legislation (laws passed by the legislature). Delegated legislation can be enacted more quickly and with less debate, which can limit the ability of elected representatives to thoroughly review and amend the regulations.

- ii. **Potential for Abuse of Power:** Delegated legislation can grant significant powers to government agencies or officials, which may lead to the abuse of these powers. Critics argue that unelected bureaucrats should not have the authority to make important decisions that affect citizens' rights and freedoms without adequate oversight.
- iii. **Democratic Deficit:** Delegated legislation can be seen as undermining the principles of democracy because it allows decisions with legislative implications to be made by unelected officials or bodies. This can reduce transparency and accountability in the legislative process.
- iv. **Complexity and Inaccessibility:** Delegated legislation can result in a complex web of regulations and rules, making it difficult for the average citizen to understand their legal rights and obligations. This complexity can hinder access to justice and create confusion.
- v. **Lack of Public input:** Unlike the legislative process, which often includes public consultations and debates, delegated legislation is typically developed within government agencies or ministries. Critics argue that this lack of public input can lead to regulations that do not adequately reflect the needs and concerns of the affected communities.
- vi. **Erosion of Parliamentary Sovereignty:** Some critics argue that extensive use of delegated legislation can erode the principle of parliamentary sovereignty. When many important decisions are made through delegated legislation, it can diminish the role of elected representatives in shaping the laws of the land.
- vii. **Inadequate Safeguards:** Critics argue that there may not be sufficient safeguards in place to ensure that delegated legislation aligns with the intent of the enabling Act of Parliament. This can lead to regulatory overreach or deviations from the original legislative purpose.
- viii. **Lack of Accountability:** Holding government agencies or officials accountable for errors or misjudgments in delegated legislation can be challenging, as they often enjoy a degree of legal immunity or protection.
- ix. **Difficulty in Repeal or Amendment:** Delegated legislation can be difficult to repeal or amend, even if it becomes outdated or problematic. This can result in regulations that are no longer effective or relevant.

Despite these criticisms, delegated legislation can also have certain advantages, such as its flexibility in responding to changing circumstances and its ability to address technical and detailed matters that may be impractical for primary legislation. The balance between efficiency and accountability is a central issue in the debate surrounding delegated legislation, and efforts are often made to improve the oversight and transparency of this legislative process.

Delegated Legislation in India is constitutional if it conforms to the framework provided by the Indian Constitution, the parent legislation, and the principles of reasonableness, accountability, and adherence to procedural safeguards. Judicial review is a vital mechanism for ensuring the constitutionality of delegated legislation and for maintaining the balance of power between the executive and legislative branches of government. Likewise, the constitutionality of delegated legislation in the United States is discretion of the US Supreme court to decide from case-to-case basis. Courts will examine whether Congress has provided clear guidance to agencies, whether due process rights have been respected, and whether regulations align with the Constitution and federal statutes. As long as agencies operate within the bounds of their delegated authority and adhere to constitutional principles, delegated legislation is considered constitutional in the U.S. In essence, judicial control over delegated legislation helps ensure that it remains within the boundaries set by the primary legislature and respects the rule of law. It serves as a crucial checks and balances on the executive branch's exercise of legislative powers through delegated legislation, ensuring that it does not infringe upon individual rights or exceed the authority granted by the legislature.

To conclude, whether delegated legislation is considered better in India or the US depends on one's perspective and the specific criteria used for evaluation. It is important to note that both countries have legal and political systems that have evolved to suit their unique needs and circumstances, and what may be considered "better" in one context may not necessarily apply to the other.

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