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PARLIAMENTARY CONTROL OVER DELEGATED LEGISLATION: EFFECTIVENESS IN INDIA

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ABSTRACT

This paper attempts to define delegated legislation and also shows the origin of it, right starting from 1833, and widely used in 19 and 20th centuries. The development of it highlights the importance of delegated legislation in India and also the need for it, such as ensuring that Parliament remains the highest law-making body with the help of the Re-Delhi case, ensuring that power is exercised fairly and without arbitrary use of power, to protect fundamental rights and maintain accountability by mandating disclosure and reasons for decisions. It also talks about the review mechanism that control the delegated powers: initial stage control & direct and indirect control. This control includes simple, laying subject to negative & affirmative, as well as the review done by parliamentary committees. At the end, it discusses the reasons why parliamentary controls remain limited, such as volumes of Rules, lack of debate, and limited judicial intervention.

1. INTRODUCTION

1.1 Meaning

Delegated legislation means law made by authorities other than the legislature. It shows the power given to executive or administrative agencies by the primary law-making body under a parent statute. Delegated legislation is also known as subordinate or secondary legislation.³ The subordinate authority will have work such as filling in details, framing rules, or issuing regulations, but within the limits set by the enabling act. They can't override the policy made by the legislature, as it is the constitutionally supreme law-making body.⁴ They are subject to parliamentary and judicial control to prevent excessive delegation if it goes beyond the scope of delegation. When a bill is introduced, parliament may restrict delegation by specifying its

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³ *Delegated Legislation in India*, 2 IND. J. ADMIN. L. REV. (no. 3), <https://ijalr.in/volume-2/issue-3-2/delegated-legislation-in-india/>.

⁴ *Judicial Supremacy v. Parliamentary Supremacy in India*, LLOYD L. COLL. (July 7, 2022), <https://www.lloydlawcollege.edu.in/blog/judicial-supremacy-v-parliamentary-supremacy.html>.

purposes and conditions, such as consultation, publication, or prior approval.⁵

In India, the legislature, the executive, the judiciary, and the press are considered the four pillars of the country⁶, which ensures democracy in the country. Legislative oversight is mainly done to control emergency situations like pandemics, security threats, and economic shocks. This is the time when the law-making body can't handle the situation all alone; they give a few of their powers to a delegated body to manage the situation.

In today's world, it's just not possible for the legislature to anticipate every detail, so they delegate their work to specialised agencies to lessen their workload and enable rapid responses to complex issues. In delegated legislation legislative body keeps an eye on the executive's rule-making power to maintain democracy in the country. It ensures the prevention of the abuse of power as well as safeguards the liberty of the civilian.

1.2 Origin

In India, the roots of the Delegation are found in the **Charter Act of 1833 and were** widely used in the 19th and 20th centuries when Britain and colonial India started giving powers to the executive body under the Government of India Act 1935.⁷ But later on, after independence, the Indian legislature continued this delegation to implement and administer the requirements of the primary legislation, and clarified that it must be under adequate control. Apart from this, it was also to save Parliamentary Time, allow specialists to make laws on complex and technical subjects, make the amendment or repealing process easier, and also to allow the local authority to work as they can understand and address the needs of their area, in a better way.

2. NEED FOR LEGISLATIVE OVERSIGHT

In delegated legislation, the law-making body gives some power to the executive or other body to make laws, which helps in maintaining democracy. It also holds those bodies accountable for what they are doing, but to ensure that the other body doesn't overuse the power, there is a high need for legislative oversight. These are the needs-

⁵ *Legislative Control on Delegated Legislation*, CSJMU GYAN SANCHAY (2023), <https://gyansanchay.csjmu.ac.in/wp-content/uploads/2023/03/LEGISLATIVE-CONTROL-ON-DELEGATED-LEGISLATION.pdf>.

⁶ *Note Down the Four Pillars of Indian Democracy*, ASKFILO (Apr. 6, 2025), <https://askfilo.com/user-question-answers-smart-solutions/note-down-the-four-pillars-of-indian-democracy-333131333323838>.

⁷ ⁵ Legislative Control^[3].

2.1 Ensuring that parliament remains the highest law-making body

Legislative oversight helps in maintaining the supremacy of parliament in law-making when the law-making body gives the power to another body to help them. It ensures that delegation by parliament doesn't become abdication. It also looks after the details framed by the legislature to be followed by delegated authority while exercising the delegated power. In the *Re-Delhi Laws Act* held that the legislature may delegate details but cannot delegate its essential function of laying down policy.⁸ It was the main case that led to constant supervision by parliament over delegated powers.

2.2 Ensure that power is exercised fairly and without arbitrary use of power

Whenever a law-making body delegate it's power to another authority, the rules made by them can directly affect the rights of the people, liabilities like taxes and licenses, as well as the penalty if they violate others' rights. So, if the legislative body does not maintain oversight, then it can be arbitrary or discriminatory in nature. They ensure that the rules that are made by them are rational, proportionate, as well as fulfilling the statutory purpose. It also gives the proper space to enjoy the rights by ensuring non-arbitrariness.

2.3 To protect fundamental rights

Fundamental rights are given to the citizens of India under the Constitution of India, ensured by Articles 14- 32.⁹ Where it talks about the right to equality, the right to freedom, and also the right to freedom of life and personal liberty. Apart from this, it also gives the right to people to approach supreme court in case of violation of fundamental rights under Article 32.¹⁰ By legislative oversight, it ensures that the fair procedure of rules and regulations is being followed so that it does not infringe any of the fundamental rights.

2.4 Maintain accountability by mandating disclosure of the reasons for decisions

Legislative Oversight includes laying down the law, debates, and committee reviews. Wherever the delegated authority crosses their limitation, by this, the law-making body puts them in the position to disclose the reason behind any decision made by them, and also ask them for the justification. It helps the normal people, the media and the opposition party to understand what laws are being made and why is it being made. And if the rules are not in

⁸ *Re Delhi Laws Act, 1912, In re*, A.I.R. 1951 S.C. 332 (India), <https://indiankanoon.org/doc/1814791/>.

⁹ R.S. Dalal, *Fundamental Rights Enshrined in Indian Constitution*, J. Indian Inst. Pub. Admin. (2009), <https://www.jstor.org/stable/42742760>.

¹⁰ The Constitution of India, art. 32, <https://indiankanoon.org/doc/981147/>.

favour of the welfare of the people of the country, the parliament holds the minister accountable for that. The parliamentary oversight is considered a cornerstone of democracy for the good governance of the country.

2.5 Balance efficiency with checks and balances

In India, the power of the government is divided into three parts: law-making- legislative, execution of the rule- executive, & interpreting the laws- judiciary.¹¹ When the power is delegated by the law-making body to other bodies, then the legislative body keeps a check and balance and constantly reviews that the delegated authority is not undermining the separation of powers and exercising the power within the limits.

2.6 Build public trust in governance and decision-making processes

Whenever the legislative body gives the power to another body to help them by making rules. and if in any case they override the parent act while exercising the power. Then the parliament ask to amend it, or annul the rules or to draft again. These kinds of activities of the parliament build trust between the people and the government. And they feel that the government is working for their welfare.

3. REVIEW MECHANISMS

Delegated authority makes the rules, regulations, and bylaws within a framework provided by the legislature under a parent statute; they can't override the parent act. Legislative oversight holds the government responsible for maintaining the supremacy of the legislative as the primary law-making body.

Parliamentary control over delegated legislation can be mainly divided into two groups: initial-stage control & direct and indirect control-

3.1 Initial-Stage Control - This makes it clear how much power should be delegated to the executive or other body. And also states that the core subject of that primary statute under which the power has been delegated, that must be retained by the law-making body itself. In each house, the rule of procedure says that the bill which is proposing the delegation must be

¹¹ Ashutosh Acharya & Manindra Singh Hanspal, *Comparative Analysis of Separation of Powers: Theoretical and Practical Insights from India*, 7 Int'l J. Pol. Sci. & Governance 191 (2025), <https://www.journalofpoliticalscience.com/uploads/archives/7-1-33-783.pdf>.

accompanied by a memorandum on delegation, which will explain its scope, reasons, and the type of power, whether it is normal or exceptional. It clarifies to the member the necessary extent and the type of the delegation before the bill is passed.¹²

3.2 Direct and Indirect Control

There are three types of it-

3.2.1 Direct Parliamentary Control - General Control

In general control, whenever the act comes into force, then the control is being done through the ordinary work of the parliament, such as

- i. debates on addresses
- ii. Motions- it means, whenever there is a need for discussion on a decision on any matter, then the member gives a formal proposal in the house to initiate the discussion, it's called a motion.
- iii. Budget discussions
- iv. Starred questions- the questions, which are being asked by Members of Parliament, and answers must be given in oral form, and also allow ministers to ask follow-up questions.
- v. Unstarred questions- They refer to the questions that must be answered in the written form, and also it doesn't allow ministers to ask follow-up questions.
- vi. Calling-attention motions- It is a parliamentary procedure where a member draws the minister's attention to an urgent matter related to the public; it doesn't end here; the minister is also required to make a statement on it.¹³

The general control allows the MPs to criticise and demand the amendment, even if there is no formal motion is made, it is done whenever the rules are made and are objectionable in nature.

3.2.2 Direct Parliamentary Control - Special Control

In special control, the legislation must be placed before one or both houses for a certain period of time so that the members are formally informed about it, and they can challenge the legislation if they feel it needs to be changed.

3.2.2.1 Simple laying- in this, the rules become effective when they are laid down in front of parliament to inform them. It remains a law until a separate motion is not

¹² Aparajita Kumari, *Control Mechanism over Delegated Legislation*, 6 INT'L J. CREATIVE RSCH. THOUGHTS 1414 (2018), <https://www.ijcrt.org/papers/IJCRT1813055.pdf> (last visited Dec. 8, 2025).

¹³ Aparajita Kumari, *Control Mechanism over Delegated Legislation*, 6 INT'L J. CREATIVE RSCH. THOUGHTS 1414 (2018), <https://www.ijcrt.org/papers/IJCRT1813055.pdf> (last visited Dec. 8, 2025).

brought by a member of the house.¹⁴

3.2.2.2 Laying subject to negative resolution: in this, the rules take effect immediately, but either of the houses can raise the question within 40 days to annul the rules. It is also considered a deterrent. And also, the most common form that is being used to prompt ministers to modify rules to avoid criticism.¹⁵

3.2.2.3 Laying subject to affirmative resolution- in this, the rules have no legal effect until its presented in front of each house and get the approval. It takes a lot of time and is also reserved for delegated legislation, which affects public expenditure, or is closely approximated to primary legislation.¹⁶

3.2.3 Indirect Parliamentary Control - Committees

Committees in each house have an indirect control over delegated legislation, which is systematic in nature, to see whether delegated powers are being exercised within the scope of the parent act or not, and also whether it is being exercised to attain the objective or not. These committees can call for documents whenever they feel the need to do so, or they can also ask for an explanation from the ministers. They also examine whether the rules comply with the conditions, such as consultation, publication, and after that, they also send it to the house with the recommendation to modify, withdraw, or remake particular instruments.¹⁷ The government also gives a significant amount of value to these committees so that an indirect check can be made on delegated legislation.

4. WHY PARLIAMENTARY CONTROL REMAINS LIMITED

Parliamentary control over delegated legislation remains limited due to many reasons in India, especially when the administrative complexity is growing massively. The reasons are-

4.1 Volumes of Rules

In a developing country like India, the delegated legislation is making thousands of rules and regulations yearly, which is going beyond the capacity of the parliament to review them. It makes it even harder for the parliament when they don't have enough information about the state's socio- economic roles, and also the technical details. Getting data is very crucial for parliament to review the rules, which are evolving day by day; it is not as easy as it used to be.

¹⁴ *Delegated Legislation in India*, LawBhoomi (last visited Dec. 15, 2025), <https://lawbhoomi.com/delegated-legislation-in-india/>.

¹⁵ Kumari, *supra* note 2, at 1420.

¹⁶ *Ibid.*

¹⁷ *Committee on Subordinate Legislation*, RAJYA SABHA SECRETARIAT (2005).

In situations like this, - When there are not enough details in a specialised area, such as atomic energy, pharmaceuticals, etc., it makes the members overwhelmed to review it.

4.2 Lack of debate

Parliament does have a very limited period of time; most of the time goes in making policy, dealing with foreign affairs and political matters, as it's the priority to deal with them. But because of dealing with such matters, it leaves very little time to allot the slots for debating about the rules made by the delegated authority, such as the executive. Also, there is a proper discipline to be followed while debating, because of this, the government replies very sufficiently without any follow-up questions, instead of the presence of the question, resolutions, and motions under Lok Sabha Rule 59.¹⁸ At last, it's leading to abuse of power due to the lack of deep analysis through follow-up questions.

4.3 Practical constraints

India's parliament is very large in number, with many members, which makes it very hard to examine each and every law in detail. Apart from this, the executive does have the majority support in parliament, which makes it easy to pass any law in the absence of effective criticism by the opposition. There are committees too, but they can't review all laws effectively because of many reasons. Lack of a compulsory laying requirement is also one of the reasons. Political control over the executive is very irregular and inconsistent, and there is no automatic or systematic mechanism to review the delegated legislation. There is very limited parliamentary supervision, which leads to weakening democratic control and accountability.

4.4 Inadequate procedural mechanism

The laying procedure means placing the rules before parliament, which are made by the government, but parliament doesn't need to participate actively to approve them. It normally comes into effect until it isn't rejected by them. And most of the time, parliament doesn't reject it because of the political risks and efforts they have to put into it. A large number of rules follow a negative resolution system, where the rules need to be challenged within the limited time limits; if no one challenges it, then it will be considered as law. So, until there is a law that directly affects the people or has attracted the attention of people, it gets passed through

¹⁸ Pallavi Bajpai & Mohit Vats, *Separation of Power & Delegated Legislation: An Implicit Poise Created by Judicial Detour*, 6(2) Int'l J. Creative Rsch. Thoughts 923 (2018), <https://www.ijcrt.org/papers/IJCRT1812758.pdf>.

without proper discussion, reducing parliamentary oversight.

4.5 Excessive executive control

The executive does have the majority power in the parliament, so it safeguards the executive from strict supervision of its actions. It keeps the procedure of making policy with freedom and flexibility, where most of the time, rules made by them are presented as technical or administrative matters, and the government claims that it does not need a close examination. In any case, if it gets challenged also, during question hour, the minister often gives vague answers and also avoids taking responsibility for the rules. At the same time, the opposition party also make sure that they don't oppose the government, which prevents the internal criticism of the parliament itself. At last, it leads to quick decision-making rather than strong accountability of the government to rules, which makes the parliament's oversight of the executive even weaker.

4.6 Lack of expertise

Parliament often faces struggles while dealing with technical rules such as finance, health, and environment, due to the lack of specialised or support staff who can analyse them deeply. The members of parliament heavily rely on committees, which review it, but very selectively, leading to the overreach of power exercised by delegated authority.

4.7 Limited judicial intervention

Usually, the judiciary doesn't intervene with the laws that give the power to the executive to make rules until it doesn't violate the constitution. They normally accept the broad and basic laws. Judicial review mainly checks whether the executive is exercising the powers within their limits or not, and the rules made by them are good, fair and reasonable or not. Courts respect the intention of the executive and rarely cancel the rules that are already in force. At last, parliament remains the main authority to control the delegated legislation, but as parliament's oversight is weak, it makes the effective accountability very limited.

5. CONCLUSION

The paper discusses with the delegated legislation, its origin, the importance, the review mechanisms, as well as the reason why parliamentary control remains limited. The paper demonstrates that even though there are bodies such as the judiciary and parliament to look after rules made by bodies other than law-making. But the judiciary intervenes only in the

situation when they observe that the rules are violating the constitution. otherwise, it accepts the basic law and avoids direct interference. As a result, most of the power stays with the parliament to review it, raise questions and challenge it. However, they also refrain from doing so, by and large, as they have a lack of experts who can deal with the technical rules, such as medical, finance, etc. Apart from this, there are no sufficient shifts to ask questions to them as well. Whenever there's been a question raised, the government give the answers which are sufficient, without any follow up question. Which ultimately results in the situation of delegated authority overexercising its power.

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