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# A Whether The Delegated Legislation Is Constitutional Or Not?

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## **ABSTRACT**

*Recently, it has been frequently observed and debated that the Indian government takes biased decisions without taking into kind consideration the grievous impact caused on the people. They often forget their motto; "To the people, for the people, and by the people". Their ultimate power is "MONEY",; which leads to the misuse of power. In this paper, the author discusses the concept of delegated legislation. When a new concept evolves, the drawbacks automatically evolve, so the author has highlighted the issues raised because of the functioning of auxiliary legislation. We are all bound by our Indian Constitution to this day, so the author has cited whether this type of legislation is constitutional by challenging it with many detailed cases. In the middle of the paper, the author mentioned the factors influencing the concept's growth as delegated legislation has rapidly increased in recent years. Lastly, the paper is concluded with the author's opinion and observations about the concept and how it created chaos inside the three organs of the government.*

**KEYWORDS:** Delegated, Legislation, Indian, Constitutional, Evolution

## INTRODUCTION:

India is a developing country with a steep increase in the population of a minimum of 0.55% for the past consecutive years. Due to the large population, numerous laws were created. The country felt difficulty in maintaining and regulating the laws among the citizens as there was a single authority for the same. So, it leads to the concept of Delegated Legislation. Delegated legislation, also known as auxiliary legislation, is an act made by someone or something other than Parliament.

## OVERVIEW AND BACKGROUND:

The historical context of the delegation of power is associated with the Charter Act of 1833, when the East India Company began to regain political influence in India. The Charter Act of 1833 placed administrative powers solely in the hands of the Governor-General, an official body. He had the power to make laws and directives to repeal, correct, or change laws or instructions that applied to all individuals regardless of country. The Government of India Act 1935 was passed in 1935, including a severe devolution scheme. A report of the Committee on the Powers of Ministers was presented and approved, which settled the case for the allocation of forces and the appointment of enactments considered necessary in India. The Indian Constitution contains about 400 articles, and it is not surprising that the drafters of the Constitution included remedies for it. But why were these provisions written into the Constitution? This is because politicians in the Constituent Assembly tend to duplicate legislation. Those legislative formulation issues were of modest importance compared to other major constitutional issues that were sidestepped by Congress and left to future consensus or judicial interpretation. Under the Parliament Act, Parliament can delegate the power to legislate to another person or body. An Act of Parliament establishes a single or special law system and usually describes the law's purpose. By delegating legislation from Parliament to the Executive or other subordinates, various persons or organizations are empowered to incorporate more specifics into an Act of Parliament. Subordinate legislation comes from any power other than the sovereign power, as stated by Sir John Salmond. In other words, "Delegated legislation" means the exercise of legislative power by an agent who is inferior to or subordinate to the Legislature. Delegated legislation, also referred to as subsidiary legislation, is an enactment made by an individual or body other than Parliament.

## ADVANTAGES OF DELEGATED LEGISLATION:

➤ Getting rid of the burden imposed on Parliament:

Parliament has to pass several laws during the short period of its existence. It has to do such intensive work that it can hardly enact the provisions of the law in detail. Suppose Parliament determines the minute and minor details of every single piece of legislation by making all the rules required for that piece of legislation. In that case, it takes too much time and can only deal with a small amount of the law in detail. It is a lengthy, time-consuming process, and it is also costly to run a parliamentary process. It cannot cope with the growing needs of legislation. So, there is a need to overcome this burden, and this is only possible by delegating legislative powers to subsidiaries or executives. Delegated bodies in which an expert resides are better suited to make laws and meet the community's needs. It saves Parliament time by allowing members to create or quickly change small items.

➤ Facile process for decision-making:

Local councils are better acceptable to make laws for their constituencies because they recognize the country in their constituencies better than every other. These neighbourhood bodies could make higher legal guidelines for their area that Parliament cannot do because they know their neighbourhood wants what they need. And it's essential to recognize the character for whom we are making legal guidelines. Parliament makes legal guidelines for a broad precept, while its delegate deals with a nearby principle. This separation of powers facilitates the easy strolling of the Legislature.

➤ Easily accessible during extraordinary circumstances and Emergency:

Delegated legislation allows for swift action in an emergency, but Parliament should wait to make any decision. He must call a meeting where the M.P. will discuss an emergency topic. And then, if everyone concludes, only this Act would pass. In some cases, Parliament needs more time to craft legislation, and fast and safe legislation is required for the nation's safety. For example, in the United Kingdom, the Prevention of Terrorism Act was created as delegated legislation, and now this Act has added a new prohibited group to terrorism. Therefore, it is more appropriate for delegated bodies to create and deal with legislation.

➤ It is not rigid as it has Flexibility:

Under this Act, Parliament legislates in a broader framework, and the Executive must fill in the details. Therefore, these minor details can be changed directly without amendment in Parliament. Therefore, the laws passed by it are flexible and can be the best for the needs of modern society.

➤ Technical expertise:

Today's world has emerged as highly technological and complex through the development of modern approaches and advancement in a generation. So parliamentarians must understand every discipline, but one cannot be a master in all fields. Therefore, it is difficult for the members of Parliament to get all the information to create legislative guidelines in numerous areas, such as controlling age, ensuring environmental safety, and managing numerous business difficulties that require basic knowledge. Further, Parliament is not a forum that can legislate on administrative and technical information but is more concerned with social problems and the rule of thumb of law. Therefore, it is a far-fetched concept for Parliament to discuss a broad topic importantly and leave the details of relaxation for fulfilment by an expert in that particular field. Therefore, authorities with more skills, enjoyment, and knowledge are better suited to regulate.

➤ Used as a trial or a test basis:

It can be used as a test basis. This allows for fast implementation. In some cases, if not by the laws and regulations, it can be changed, and new laws can be issued to replace the old ones. If this law is appropriate in the situation, this law will apply in this case. Therefore, it is an advantage in the face of modern society.

➤ Focuses on the people affected by the commencement of new laws:

For effective legislation, it is essential to know the needs and interests of the people affected by the law or legislation. It is easy to sit in big houses and make decisions for the affected people, but it is difficult to know their interests and needs by living in the state where they live and then making laws for them will benefit the affected people. Therefore, the legislative power should be handed over to the Executive by the Parliament. The Executive knows the plight of the victims better than the Legislature.

## CONSTITUTIONALITY OF DELEGATED LEGISLATION ALL OVER THE WORLD:

The U.S. Constitution prohibits delegated legislation for these two reasons, at least theoretically. "*Separation of Power*" and "*Delegatus non potest delegare*" are these phrases. The U.S. Constitution does not contain any provision explicitly stating that it transfers power from the Legislature to the Executive. How can Congress delegate its powers if it was once a delegate? The American Constitution's founders absorbed the political philosophy promoted by thinkers like John Locke and Montesquieu. According to John Locke, a legislative body cannot assign its authority to make laws to anybody or anywhere. The power to make laws and to carry them out should not be in the same hands, he stressed, because this power could be abused by those who would use it to exempt themselves from the law or for their profit.

### *Analysis of the United States of America:*

Therefore, John Locke established the notion of "*delegatus non potest delegare*," which has the same meaning as previously stated. As a result of the United States' acceptance of the principle of separation of powers, only Congress and not any other branches of the government are allowed to exercise legislative authority. Moreover, it has contended that because the American Constitution has already given Congress power, it cannot further delegate that power. The Supreme Court of the United States noted <sup>1</sup>that that department should only exercise the authority given to one department without interfering with the authority or jurisdiction of another individual. Chief Justice Marshall noted <sup>2</sup>that no distinction has been made between the significant subjects. As a result, it is regulated by the Legislature itself and those of lower interest that was given to the Executive for filling in the gaps in the structure of that legislation. So, to sum up, delegated legislation in America has not been accepted in theory. Still, in practice, the Legislature has given the Executive the authority to make laws.

### *Analysis Of the United Kingdom:*

The foundational principle of the U.K. Constitution is the notion of parliamentary sovereignty. In England, the Parliament is paramount and is not constrained in any way by the Constitution. Additionally, the English Parliament has broad authority to transfer its legislative authority to the Executive or other subordinate bodies. A report of the Committee on Ministers' Powers,

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<sup>1</sup> *Field v. Clarke*, 143 U.S. 649 (1892).

<sup>2</sup> *Wagman v. Southard*, 23 U.S. 1 (1825).

also known as the Donoughmore Committee, included three pieces of the legislation cited by renowned English attorney Sir Cecil Carr.

They are as follows:

➤ The Crown uses her prerogative powers to create the first and smallest minoronent.
➤ Acts of Parliament make up the second and most imporcrucialonent, which the King makes in Parliament.
➤ The body to whom the King gave the Parliament the authority to pass laws creates the third and largest significant.

According to Sir Cecil Carr, the Parliament can only produce the calibre of legislation that the contemporary public desires if it is willing to give up its power to enact laws.

### ***Analysis of India:***

Numerous cases illustrate the status and constitutionality of delegated legislation in India. Before independence, or pre-independence and post-independence, are the two phases into which it has been separated.

### **Pre-Independence:**

Delegated legislation is not allowed, according to the Privy Council's rationale <sup>3</sup>The Privy Council has approved only Conditional Legislation. A territory's civil and criminal justice system may be administered by officers occasionally appointed by the Lieutenant-Governor. According to the Privy Council, it is preferable to enlist the aid of the subordinate agency in formulating the rules and regulations that will make up the legislation and to grant another body the crucial legislative powers that the Constitution only grants to the Legislature. He also talked about how formulating legislation policy was a crucial part of the legislative process.

The Privy Council once more used Condition legislative, <sup>4</sup>among other things, the legality of the Emergency Ordinance issued by the Governor-General of India was contested. Because of the grounds that he was usurping the authority of the Provincial Government, it was contested. He established specialized criminal courts for certain offences, but only the Provincial

<sup>3</sup> *Queen v. Burah*, I.R. 1945 P.C. 48.

<sup>4</sup> *King v. Benori Lal Sharma*, (1945) 47 BOMLR 260.

Government could establish any courts. According to the judicial commission, this is not delegated law. The Privy Council further decided that it illustrates an unusual legislative authority through which the local administrative body determines the local application of the State statute as required.

## **Post-Independence**

The delegation of legislative functions is not treated in the same way by the Indian Constitution as the well-known British Parliament. The Indian Constitution's stated provisions must be interpreted to determine how far delegation is permitted in India. It cannot be claimed that the legislative authority is endowed with an illimitable right of delegation.

The Supreme Court of India upheld the Legislature's transfer of authority to the Executive. There should be no misunderstanding that the term "Parliament may by law provide" in Article 312 does not allow for any delegation of authority in laws adopted by that provision.<sup>5</sup> According to English law, the Parliament is free to assign any number of powers. On the other hand, the Congress in America and India can only delegate some of its duties. It does not, therefore, possess unrestricted or unlimited authority. As a result, India permits delegated legislation within specific bounds and under close supervision.

The Delhi Laws Act case is the standard delegated law case. Seven judges rendered separate decisions after hearing the case. Two extremes were used to argue the issue.<sup>6</sup>

### **Argument 1:**

The ability to delegate comes with the authority of legislation. There can be no restriction on the delegation of legislative powers if the Legislature relinquishes itself.

### **Argument 2:**

The Constitution's provisions regarding the separation of powers and *delegatus non potest delegare* imply that the delegation of legislative authority is forbidden.

The Supreme Court adopted a moderate stance and ruled that:

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<sup>5</sup> *Raj Narain Singh v. Chairman, Patna Administration Committee* Air, AIR 1954 SC 569.

<sup>6</sup> AIR 1951 SC 332.

(i) The idea of <i>delegatus non potest delegare</i> does not apply to the Indian Parliament because it is never regarded as an agent of anyone.
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(ii) By establishing a legislative body, Parliament cannot cede its authority or disappear.
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(iii) Legislative power is supplementary to the power of delegation.
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(iv) The restriction on delegation of power is that the Legislature cannot give up the core legislative authority that the Constitution expressly vests in it. The definition of essential legislative authority is the ability to specify the legal policy and transform that policy into an of conduct.
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The delegation was therefore deemed lawful, barring the revocation or alteration of legislative power.

## JUDICIAL CONTROL ON DELEGATED LEGISLATION:

While subordinate legislation has emerged as a crucial component of legislation in light of the complexity of law-making, it is equally crucial to consider how this legislation process by the Executive under delegated powers can be harmonized with democratic norms or parliamentary control. It is crucial to ensure that Parliament's fundamental and unalienable right to enact laws is not infringed upon or usurped in the name of "subordinate legislation."

### 1. Normal Delegation:

a) <b>Positive:</b> the scope of the delegation is expressly stated in the enabling Act;
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b) <b>Negative:</b> the delegation does not contain the authority to carry out specific actions (these are not allowed)
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### 2. Extraordinary Delegation:

a) The ability to enact legislation on moral issues (policy)
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b) Ability to change a Parliamentary Act ( <i>In re Delhi laws Acts</i> )
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Regulation 34 of the West Bengal State Electricity Regulation, allowed the Board to terminate

the employment of any permanent employer with three months' notice or payment instead of Beaulieu of notice. Regulation 34's hiring and firing guidelines are similar to the Henry VIII clause.<sup>7</sup>

The court took a similar stance in the case of *Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly*, where Rule 9 of the CIWTC's service rules granted the power to terminate on the same grounds as in the case of *Desh Bandhu Ghosh*. The court continued by stating that "the Henry VIII clause" is the only apt description of Rule 9(i). It is invalid because it gives the Corporation arbitrary and total power.

## LIMITATIONS ON DELEGATED LEGISLATION:

The determination or selection of the legislative policy and the formal enactment of that policy into a binding rule of behaviour is essential legislative functions that the Legislature cannot delegate<sup>8</sup>. The ability to amend or abolish legislation is one of the essential legislative functions that cannot be delegated.<sup>9</sup> Delegated legislation can only be implemented retroactively with an express implication, including rules, bye-laws, and notifications.

A capacity to tax or charge any fee cannot be derived from the enabling enactment's powers' sheer generality. There is no room for inferred authority to impose such a tax or fee, and any such power of imposition by a delegated authority must be very apparent significant amendments to the existing statute are allowed. The Legislature is in charge of setting policy; thus, if a delegate is allowed to change it at will, that may amount to an actual usurpation of legislative authority.

The following grounds may also be used to declare delegated legislation invalid:

(A) Violation of the Indian Constitution.
(B) Infringement of the Enabling Act
(C) A violation of natural justice principles when the statute itself calls for such a provision.

## CONCLUSION:

<sup>7</sup> *Desh Bandhu Gosh v. W.B. State Electricity Board*, (1958) 3 SCC 116.

<sup>8</sup> *In re*, Article 143, Constitution of India, AIR 1951 SC 332.

<sup>9</sup> *India Sugar Refineries Ltd. v. State of Mysore*, AIR 1960 Mys 326.

Thus, it can be articulated that regulations created by a parliamentary act of law are referred to as delegated or subordinate legislation. Even if the Legislature's job is to make laws, legislation must grant authority to other entities or people. The law granting such authority is called the Act of Enabling. The council establishes broad regulations under the enabling Act, and the chosen expert orders specific guidance. The Indian Constitution allows for assigned enactment. It is present in the form of bye-laws, bye-rules, and so forth. Various factors influence its growth. The State Legislature and Parliament need to be more occupied, making it impossible to monitor the growing number of enactments, which are crucial to oversee daily. Our government officials are not expected to have the expertise and knowledge that the current legislation requires of concerns in several disciplines, such as education. If there is a disappointment or flaw in how it is applied, subordinate enactments are more adaptable, quickly and efficiently amendable, and reversible than conventional enactments. While new possibilities arise that were not feasible when it was being influenced, subordinate legislation can swiftly pass a demonstration to address them.

In a collection of legislation, quick, convincing, and classified decisions are unachievable. Administrators are thus appointed with the drive to establish guidelines for handling such situations. These are the primary causes of today's rapid rise of delegated legislation, among many more. "Delegated law is a word that covers a multiplicity of confusion," said Justice P. B. Mukherjee. It serves as a justification for the lawmakers, a cover for the administrators, and a challenge to the constitutional judges. It is considered necessary in the current society where social, economic, technical, psychological, and administrative speed outpaces the open and tranquil old legislative principles and processes. Legislators are accused of abdicating their authority and evading the responsibility placed upon them by democratic voters. The King lost his legislative authority in England at the Battle of Runnymede. Parliament lost its authority in the following, leaving the country's government to be provided by administration and bureaucracy.