

Delegated Legislation in India

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Introduction

The issue of delegated legislation has been one of the most debated issues in the domain of legal theory because of its various implications. Scholars have consistently presented differing and even contradicting views about delegation of power to legislate and have thus taken different stands on the issue. While Delegated Legislation has been a widespread practice in modern times and is almost an accepted norm, there have been contrary views. For instance Cooley has expressed a staunchly critical view of the power to delegate. He has stated that "One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust."¹ Further he has also observed that "No legislative body can delegate to another department of the government, or to any other authority, the power, either generally or specially, to enact laws. The reason is found in the very existence of its own powers. This high prerogative has been entrusted to its own wisdom, judgment, and patriotism, and not to those of other persons, and it will act ultra vires if it undertakes to delegate the trust, instead of executing it."² While such positions do raise the questions about the propriety of delegating the power to legislate by higher legislative bodies to the lower ones, the fact remains that this has been a general practice followed in all modern democratic countries. Hence it is important to understand what is firstly meant by delegated legislation and then analyse its various aspects.

Meaning of Delegated Legislation

Delegated legislation (also referred to as secondary legislation or subordinate legislation or subsidiary legislation) is law made by an executive authority under powers given to them by primary legislation in order to implement and administer the requirements of that primary legislation. It is law made by a person or body other than the legislature but with the legislature's authority. Often, a legislature passes statutes that set out broad outlines and principles, and delegates authority to an executive branch official to issue delegated legislation that flesh out the details (substantive regulations) and provide procedures for implementing the substantive provisions of the statute and substantive regulations (procedural regulations). Delegated legislation can also be changed faster than primary legislation so legislatures can delegate issues that may need to be fine-tuned through experience.

Legislation by the executive branch or a statutory authority or local or other body under the authority of the competent legislature is called Delegated legislation. It permits the bodies

¹ Cooley's Constitutional Limitations, Volume I at page 224

² Cooley Constitutional Law 4th Edition, page 138

beneath parliament to pass their own legislation .It is legislation made by a person or body other than Parliament. Parliament, through an Act of Parliament, can permit another person or body to make legislation. An Act of Parliament creates the framework of a particular law and tends only to contain an outline of the purpose of the Act. By Parliament giving authority for legislation to be delegated it enables other persons or bodies to provide more detail to an Act of Parliament. Parliament thereby, through primary legislation (i.e. an Act of Parliament), permit others to make law and rules through delegated legislation.

The legislation created by delegated legislation must be made in accordance with the purposes laid down in the Act. The function of delegated legislation is it allows the Government to amend a law without having to wait for a new Act of Parliament to be passed. Further, delegated legislation can be used to make technical changes to the law, such as altering sanctions under a given statute. Also, by way of an example, a Local Authority have power given to them under certain statutes to allow them to make delegated legislation and to make law which suits their area. Delegated legislation provides a very important role in the making of law as there is more delegated legislation enacted each year than there are Acts of Parliament. In addition, delegated legislation has the same legal standing as the Act of Parliament from which it was created. There are several reasons why delegated legislation is important. Firstly, it avoids overloading the limited Parliamentary timetable as delegated legislation can be amended and/or made without having to pass an Act through Parliament, which can be time consuming.

Changes can therefore be made to the law without the need to have a new Act of Parliament and it further avoids Parliament having to spend a lot of their time on technical matters, such as the clarification of a specific part of the legislation. Secondly, delegated legislation allows law to be made by those who have the relevant expert knowledge. By way of illustration, a local authority can make law in accordance with what their locality needs as opposed to having one law across the board which may not suit their particular area. A particular Local Authority can make a law to suit local needs and that Local Authority will have the knowledge of what is best for the locality rather than Parliament.

Thirdly, delegated legislation can deal with an emergency situation as it arises without having to wait for an Act to be passed through Parliament to resolve the particular situation. Finally, delegated legislation can be used to cover a situation that Parliament had not anticipated at the time it enacted the piece of legislation, which makes it flexible and very useful to law-making. Delegated legislation is therefore able to meet the changing needs of society and also situations which Parliament had not anticipated when they enacted the Act of Parliament.

A portion of law-making power of the legislative is conferred or bestowed upon a subordinate authority. Rules & regulations which are to be framed by the latter constitutes an integral portion of the statute itself. It is within power of parliament when legislating within its legislative few, to confer suborbital administrative & legislative powers upon some other authority. Subordinate legislation, is the legislation made by an authority subordinate to the sovereign authority, namely, the legislature. According to Sir John Salmond, "Subordinate legislation is that which proceeds from any authority other than the sovereign power and is, therefore, dependent for its continued existence and validity on some superior or supreme authority." Most of the enactments provide for the powers for making rules, regulations, by-laws or other statutory instruments which are exercised by specified subordinate authorities. Such legislation is to be made within the framework of the powers so delegated by the legislature and

is, therefore, known as delegated legislation. Thus all law making which takes place outside the legislature expressed as rules, regulations, bye laws, orders, schemes, directions or notifications etc is termed as delegated legislation.

History of Delegated legislation in India

The Privy Council was the highest Court for appeal from India in constitutional matters till 1949. The question of constitutionality came before the Privy Council in the famous case of *R.Vs. Birah (1878) 3 AC 889*. An Act was passed in 1869 by the Indian Legislature to remove Goro Hills from the civil and criminal jurisdiction of Bengal and vested the powers of civil and criminal administration in an officer appointed by the Legislative Governor of Bengal. The Legislative Governor was further authorized by section 9 of the Act to extend any provision of this Act with incidental changes to Khasi and Jaintia Hills. By a notification the Legislative-Governor extended all the provisions of the Act to the districts of Khasi and Jaintia Hills. One Burah was tried for murder by the commissioner of Khasi and Jaintia Hills and was sentenced to death. The Calcutta High Court declared section 9 as unconstitutional delegation of legislative power by the Indian legislature. The ground was that the Indian Legislature is a delegate of British Parliament, therefore, a delegate cannot further delegate. The Privy Council on appeal reversed the decision of the Calcutta High Court and upheld the constitutionality of section 9 on the ground that it is merely a conditional legislation. The decision of the Privy Council was interpreted in two different ways.

- (i) Indian legislature was not delegate of British Parliament; there is no limit on the delegation of legislative functions.
- (ii) Since Privy Council has validated only conditional legislation. Therefore, delegation of legislative power is not permissible.

So, it did not become clear whether full-fledged delegated legislation was allowed or only conditional legislation was allowed.

Federal Court

The question of constitutionality of delegation of legislative powers came before the Federal Court in *Jhatindra Nath Gupta Vs. Province of Bihar, AIR 1949 FC 175*. On this case section 1(3) of Bihar Maintenance of public order Act, 1948 was challenged on the ground that it authorized the provincial government to extend the life of the Act for one year with modification as it may deem fit. The Federal Court held that the power of extension with modification is unconstitutional delegation of legislative power because it is an essential legislative Act. In this manner for the first time it was held that in India legislative powers cannot be delegated. However, Fazal Ali J. in his dissenting opinion held that the delegation of the power of extension of the Act is unconstitutional because according to him it merely amounted to a continuation of the Act. Later on, it is submitted that the minor view was correct and the Supreme Court upheld similar provision in another cases.

Supreme Court

The decision in *Jatindra Nath Case* created doubts about the limits of delegation of legislative powers. Therefore, in order to clarify the position of law for the future guidance of the legislature

in matters of delegation of legislative function, the President of India sought the opinion of the Court under Article 143 of the Constitution on the constitutionality of three Acts which conferred extension of area and modification power to the executive.

The Delhi Laws Act case, AIR 1951 SC 332, among them, is said to be the Bible of delegated legislation. Seven judges heard the case and produced separate judgments. The case was argued from two extreme points.

Argument-1: Power of legislation carries with it the power to delegate. If the legislative don't abdicate itself, there can be no limitation on delegation of legislative powers.

Argument-2: As there is in the Constitution the separation of powers and delegatus non potest delegare, so there is an implied prohibition against delegation of legislative powers.

The Supreme Court took the moderate view and held-

- (i) Doctrine of separation of powers is not a part of the constitution.
- (ii) Indian Parliament is never considered an agent of anybody and therefore doctrine of delegatus non potest delegare has no application.
- (iii) Parliament cannot abdicate or efface itself by creating a legislative body.
- (iv) Power of delegation is ancillary to the power of legislation.
- (v) The limitation upon delegation of power is that the legislature cannot part with its essential legislative power that has been expressly vested in it by the constitution. Essential legislative power means laying down the policy of the law and enacting that policy into a rule of conduct.

So, the delegation was held to be valid except with repealing and modification of legislative power.³

Delegated Legislation: Position under Constitution of India

The Legislature is quite competent to delegate to other authorities. To frame the rules to carry out the law made by it. In *D. S. Gerewal v. The State of Punjab*, K.N. Wanchoo, the then justice of the Hon'ble Supreme Court dealt in detail the powers of delegated legislation under the Article 312 of Indian Constitution. He observed: "There is nothing in the words of Article 312 which takes away the usual power of delegation, which ordinarily resides in the legislature.

The words "Parliament may by law provide" in Article 312 should not be read to mean that there is no scope for delegation in law made under Article 312...." In the England, the parliament being supreme can delegated any amount of powers because there is no restriction. On the other hand in America, like India, the Congress does not possess uncontrolled and unlimited powers of delegation. In *Panama Refining Co. v. Rayans*, the supreme court of the United States had held

³ <http://aclawresearch.blogspot.in/2012/12/development-of-delegated-legislation-in.html>

that the Congress can delegate legislative powers to the Executive subject to the condition that it lays down the policies and establishes standards while leaving to the administrative authorities the making of subordinate rules within the prescribed limits.⁴ Art. 13 (3) Defines law and it Includes ordinance, order, byelaw, rule, regulation & notification having the force of law. In *Sikkim v. Surendra Sharma (1994) 5 SCC282*- it is held that ‘All Laws in force’ in sub clause (k) of Art. 371 F includes subordinate legislation. Salmond defines law as that which proceeds from any authority other than the Sovereign power & is therefore, dependent for its continued existence & validity on some superior or supreme authority.

Criticisms of Delegated legislation

Delegated legislation is criticized for its various main defects which are as follows:-

- It has been suggested that by allowing delegated legislation it has allowed to make and amend laws.
- It lacks democracy as too much delegated legislation is made by unelected people.
- Delegated legislation is subject to less Parliamentary scrutiny than primary legislation. Parliament therefore has a lack of control over delegated legislation and this can lead to inconsistencies in laws. Delegated legislation therefore has the potential to be used in ways which Parliament had not anticipated when it conferred the power through the Act of Parliament.
- Delegated legislation is the lack of publicity surrounding it. When law is made by statutory instrument the public are not normally notified of it whereas with Acts of Parliament, on the other hand, they are widely publicized. One reason for the lack of publicity surrounding delegated legislation is because of the volume of delegated legislation made and this result in the public not being informed of the changes to law. There has also been concern expressed that too much law is made through delegated legislation.⁵

Reasons for Growth of Delegated Legislation

Growth of Administrative Process bulk of law comes from the administrators.

1. Law making or ever widening modern welfare and service state is not possible. For the nature and quality of work required 365 days – may not be sufficient and if overburdened the parliament can't give quality legislation. Also it is occupied with important policy matters and rarely finds time to discuss matters of details.
2. Filling in Details of legislation- The executive in consultation with the experts or with its own experience of local conditions can better improvise. Also legislation has become highly technical because of the complexities of a modern govt.

⁴ <http://aclawresearch.blogspot.in/2012/12/development-of-delegated-legislation-in.html>

⁵ Ibid

3. Need for flexibility:- Ordinary legislative process suffers from the limitation of lack of experiment. A law can be repealed by parliament itself, if it required adjustment administrative rule making is the only answer between two sessions.
4. Meeting Emergency Situations – it is a cushion against crisis because what if crisis legislation is needed.
5. When Govt. action required discretion – rule making power of administrative agencies is needed when the government needs to have discretion to carry out the policy objectives.
6. Direct participation of those who are governed is mere possible in delegated legislation.

Types of Delegated legislation : -

1. Power to bring an Act into operation eq: on rule date on the Govt. by notification in the Gazette. Example: on such date as the government by notification in the gazette because govt. has better knowledge of the practical exigencies of bringing the law into force. The Court Cannot Ask the Govt. to bring the law into force. It was held in *A.K. Roy. v. UOI AIR 1982 SC 710* where the constitution of the Advisory Board was in question and the term qualified to be a High Court judge changed to actual or had been a High Court judge. National Security Act. 1980 did not have this provision it was held by the that the court cannot ask the Govt. to implement.

(II) **Conditional Legislation** : - The legislation make the law but leaves it to the executive to bring the act into operation when conditions demanding such operation are obtained.

- (a) To bring an act into operation.
- (b) To extend the application of any act in force in one territory.
- (c) To extend or to except from the operation of an Act certain categories of subjects or territories.

Constitutionality of Delegated Legislation

Position in the USA: Two phenomena operate in the USA namely—1. Separation of Power and 2. “Delegatus non potest delegare”. Since Congress was itself a delegate, how can it delegate its power. The framers of the American Constitution were imbued with the political theories propagated by John Locke and Montesquieu. John Locke has said :“The legislature cannot transfer the power of making laws to any other hands : for it being but a delegated power from the people, they who have it cannot pass it over to others.”⁶

According to Locke "the legislature neither must, nor can, transfer the power of making laws to anybody else, or place it anywhere but where the people have." ⁷ Montesquieu had developed this doctrine of separation of powers.⁸ The framers of the American Constitution adopted the doctrine in its full force as seen in the provisions of the US Constitution :

⁶ John Locke, in his Civil Government, article 141

⁷ Ibid article 142

⁸ Montesquieu in his Esprit Des Lois

Art. 1, section 1. All legislative powers herein granted shall be vested in the Congress of the United States, which shall consist of a Senate and House of Representatives.

Art. 2, section 1. The executive power shall be vested in a President of the United States of America.

Art. 3, section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish.

Alongside this doctrine of separation of powers the American constitutional law had another doctrine which also negated the delegation of power. Sutherland has stated "incident to the separation-of-powers doctrine was the corollary that legislative power could not be exercised by any agency of the government save the legislature."⁹ "The rule against the delegation of legislative powers, if there is such a rule, is broader than any doctrine of separation of powers. That part of it which forbids the delegation of powers to other branches or the government comes within the doctrine of separation of powers. That part of it which forbids the delegation of powers to independent boards or commissions rests upon the maxim **delegata potestas non potest delegare.**"¹⁰ Therefore the powers thus delegated are not legislative powers. They are instead administrative or quasi-legislative powers."

Position in England :In England the Parliament is Supreme , unhampered by any constitutional limitations with wide legislative powers on the executive. Parliament being supreme and its power to legislate being unlimited, there is nothing to prevent Parliament from delegating its legislative power to the executive officers or other subordinate bodies. Sir Cecil Carr in his "Delegated Legislation" quoted in the Report of the Committee on Ministers' Powers, usually referred to as the Donoughmore Committee, said : "The first and by the far smallest part is made by the Crown under what survives of the prerogative. The second and weightiest part is made by the King in Parliament and consists of what we call Acts of Parliament. The third and bulkiest part is made by such persons or bodies as the King in Parliament entrusts with legislative power." As observed by Sir Cecil Carr, "the truth is that if Parliament were not willing to delegate law-making power, Parliament would be unable to pass the kind and quantity of legislation which modern public opinion requires." In England, the practice of delegating legislative power has certainly been facilitated by the close fusion of the legislative and executive power resulting from the development of the cabinet system of government in England.

Position in India

Pre Independence: *Queen v. Burah* wherein the Privy Council had validated only Conditional Legislation and therefore as per its reasoning delegated legislation is not permitted. The administration of civil and criminal justice within the said territory was vested in such officers as the Lieutenant-Governor may from time to time appoint. Sections 8 and 9 of the said Act provided as follows :- "Section 8. The said Lieutenant-Governor may from time to time, by notification in the Calcutta Gazette, extend to the said territory any law, or any portion of any law, now in force in the other territories subject to his Government, or which may hereafter be enacted by the Council of the Governor-General, or of the said Lieutenant-Governor, for making

⁹ Sutherland's Statutory Construction, 3rd Edn., Vol. 1, p. 56

¹⁰ Ibid

laws and regulations, and may on making such extension direct by whom any powers or duties incident to the provisions so extended shall be exercised or performed, and make any order which he shall deem requisite for carrying such provisions into operation."

"Section 9. The said Lieutenant-Governor may from time to time, by notification in the Calcutta Gazette, extend mutatis mutandis all or any of the provisions contained in the other sections of this Act to the Jaintia Hills, the Naga Hills, and to such portion of the Khasi Hills as for the time being forms part of British India. It was held that Indian legislators have plenary powers and it exercised the power in its own right and not as an agent or a delegate of the British parliament.

The privy council laid down that " seeking of assistance of a subordinate agency in the framing of rules and regulations which are to become a part of the law and conferring on another body the essential legislative functions which under the constitution should be exercised by the legislature itself. It also stated that the essential legislative function consists in the determination or choosing of the legislative policy and formally enacting that policy into binding rule of conduct.

Also in *King v. Benoari Lal Sharma* Conditional legislation was again applied by the privy council wherein the validity of an emergency ordinance by the Governor-General of India was challenged inter alia on the ground that it provided for setting up of special criminal courts for particular kinds of offences, but the actual setting up of the courts was left to the Provincial Governments which were authorised to set them up at such time and place as they considered proper. The Judicial Committee held that "this is not delegated legislation at all. It is merely an example of the not uncommon legislative power by which the local application of the provisions of a statute is determined by the judgment of a local administrative body as to its necessity." The privy council held that "Local application of the provision of a state is determined by the judgment of a local administrative body as to its necessity." Also the Federal Court in *Jatindra Nath v State of Bihar AIR 1949 FC 175* held that power of extension with modification is unconstitutional as legislative power cannot be delegated. Wherein the S. 1 (3) of Bihar maintenance of public order Act, 1948 was challenged – as it gave power of extension of modification to provincial Govt. but this case But created doubts on the limits of delegation.

Post – Independence : The Delhi Laws Act, 1912, giving power to the Government to extend to Delhi and Ajmer-Marwar with such restrictions and modifications as it thought fit any law in force in any other part of India, was held intra vires- The case also discussed the validity of the law empowering the Government to extend to part C States any law in force in a part A state and to repeal existing laws-- It was held ultra vires under article 143 of the Constitution asking the Court's opinion on the three questions submitted for its consideration and report. Section 2 of the Part C States (Laws) Act, 1950, runs as follows :-"Power to extend enactments to certain Part C States. - The Central Government may, by notification in the Official Gazette, extend to any Part C State (other than Coorg and the Andaman and Nicobar Islands) or to any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a part A State at the date of the notification and provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State.

The three sections referred to in the three questions are all in respect of what is described as the delegation of legislative power and the three particular Acts are selected to raise the question in

respect of the three main stages in the constitutional development of India. The first covers the legislative powers of the Indian Legislature during the period prior to the Government of India Act, 1915. The second is in respect of its legislative power after the Government of India Act, 1935, as amended by the Indian Independence Act of 1947. The last is in respect of the power of the Indian Parliament under the present Constitution of 1950.

As regards constitution of the delegation of legislative powers the Indian Legislature cannot be in the same position as the prominent British Parliament and how far delegation is permissible has got to be ascertained in India as a matter of construction from the express provisions of the Indian Constitution. It cannot be said that an unlimited right of delegation is inherent in the legislature power itself. This is not warranted by the provisions of the Constitution and the legitimacy of delegation depends entirely upon its being used as an ancillary measure which the legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law, and what can be delegated in the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it. Provided the legislative policy is enunciated with sufficient clearness or a standard laid down the courts cannot and should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case. These, in my opinion, are the limits within which delegated legislation is constitutional provided of course the legislature is competent to deal with and legislate on the particular subject-matter. It is in the light of these principles that I propose to examine the constitutional validity of the three legislative provisions in respect to which the reference has been made.

In case of *Raj Narain Singh v. Chairman Patna Administration committee* Air 1954 SC 569 in which S.3(1)(f) wherein the Bihar & Orissa Act, empowered the local administration to extend to Patna the provisions of any sections of the act (Bengal Municipality Act, 1884) subject to such modification, as it might think fit. The government picked up section 104 and after modifications applied it to the town of Patna. One of the essential features of the Act was the provision that no municipality competent to tax could be thrust upon a locality without giving its inhabitants a chance of being heard and of being given as opportunity to object. The sections which provided for an opportunity to object was excluded from the notification. It was held as amounting to tamper with the policy of the Act.

In *Lachmi Narain v. UOI* (1976 2) SCC 95. where the validity of Section 2 of Union Territories (Laws) Act, 1950 and Section 6 of Bengal Finance (Sales Tax) Act, 1941 was to be determined. The issue was that whether notification issued by Central Government in purported exercise of its powers under Section 2 ultra vires of Central Government.

Legislative Control on delegated legislation

While in the context of increasing complexity of law-making, subordinate legislation has become an important constituent element of legislation, it is equally important to see how this process of legislation by the executive under delegated powers, can be reconciled with the democratic principles or parliamentary control. Legislation is an inherent and inalienable right of Parliament and it has to be seen that this power is not usurped nor transgressed under the guise of what is called subordinate legislation. It can control the following:

1. **Normal Delegation: -**

- a) Positive : - where the limits of delegation are clearly defined in the enabling Act
- b) Negative: - does not include power to do certain thing (these not allowed)

2. **Exceptional Delegation: -**

- a) Power to legislate on matters of principle (policy)
- b) Power is amend Act of parliament (In re Delhi laws Acts)

W.B. State Electricity Board v. Desh Bandhu Gosh (1958) 3 SCC 116 it was held that Regulation 34 of the West Bengal State Electricity Regulation which had authorized the Board to terminate the Service of any permanent employer on three months notice or pay in lieu thereof. This hire & fire rules of regulation 34 is parallel to Henry VIII clause.

Similar position was held by the court in the case of *Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly AIR1986SC1571* wherein rule 9 of the service rules of the CIWTC conferred power to terminate on similar lines as in the case of *Desh Bandhu Ghosh* the court went on to say that No apter description of Rule 9(i) can be given than to call it "the Henry VIII clause". It confers absolute and arbitrary power upon the Corporation and therefore invalid.

Judicial Control Over Delegated Legislation

Judicial control over delegated legislature is exercised at the following two levels:-

- 1. Delegation may be challenged as unconstitutional; or
- 2. That the Statutory power has been improperly exercised.

The delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary. The scope of permissible delegation is fairly wide. Within the wide limits, delegation is sustained it does not otherwise; infringe the provisions of the Constitution. The limitations imposed by the application of the rule of ultra vires are quite clear. If the Act of the Legislature under which power is delegated, is ultra vires, the power of the legislature in the delegation can never be good.

No delegated legislation can be inconsistent with the provisions of the Fundamental Rights. If the Act violates any Fundamental Rights the rules, regulations and bye-laws framed there under cannot be better. Where the Act is good, still the rules and regulations may contravene any Fundamental Right and have to be struck down. Besides the constitutional attack, the delegated legislation may also be challenged as being ultra vires the powers of the administrative body framing the rules and regulations. The validity of the rules may be assailed as the stage in two ways:—

- (i) That they run counter to the provisions of the Act; and
- (ii) That they have been made in excess of the authority delegated by the Legislature.

The method under these sub-heads for the application of the rule of ultra vires is described as the method of substantive ultra vires. Here the substance of rules and regulations is gone into and not the procedural requirements of the rule making that may be prescribed in the statute. The latter is looked into under the procedural ultra vires rule. When the Court applies the method of substantive ultra vires rule, it examines the contents of the rules and regulations without probing into the policy and wisdom of the subject matter. It merely sees if the rules and regulations in their pith and substance are within the import of the language and policy of the statute.

The rules obviously cannot go against the intent of statute and cannot be inconsistent with the provisions of the Act. They are framed for giving effect to the provisions of this Act and not for nullifying their effect and they should not be in excess of the authority delegated to the rule-making body. Delegated legislation should not be characterised with an excessive exercise of discretion by the authority. The rules cannot be attacked to the general plea of unreasonableness like the bye-laws framed by a local body. Reasonableness of the rules can be examined only when it is necessary to do so for purpose of Articles 14 and 19 of the Constitution.

The rule of procedural ultra vires provides with a very limited method of judicial control of delegated legislation. Often there are specific saving clauses barring the jurisdiction of the courts to question the validity of rules and orders. For example, Section 16 of the Defence of India Act, 1939 lay down as follows:

“16 Saving as to orders- (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by any power conferred by or under this Act, a Court shall, within the meaning of Indian Evidence Act, 1872, presume that such order was so made by that authority.”

Such provisions can only be justified—

- (i) On the basis of special circumstances of emergency legislation, and
- (ii) On the plea of State necessity.

Illustrative cases:

Kruse. v. Johnson- It was laid down that a bye-law would be unreasonable if it is found to be (i) partial or unequal i.e. its operation as between different classes; (ii) manifestly unjust; (iii) disclosing bad faith; and (iv) involving such oppressive or gratuitous interference with the right of the people that it could find no justification in the minds of reasonable men.

Delhi Laws Act Case:

In this case the power given to the Central Government to repeal pre-existing laws was held to be ultravires.

Chintaman Rao's Case:

(1951 S.C.I 18) Article 13 has a specific impact upon the validity of all the rules and bye-laws. In Chintaman Rao's case the notification of a Deputy Commissioner prohibiting the manufacture

of bee dies during the agriculture season was invalidated on the ground of its violating Article 19 (1) (g).

Chadran v. R. (1952) Alld. 793:

A rule or bye-law must be within the power entrusted to the legislature. For example an Act of the U.P. State was devised to control the transport of goods and passengers by ferries and authorised the Commissioner to make rules for the safety of the passengers and property. But actually the Commissioner forbade the establishment of private ferries within a distance of two miles from another ferry. That rule was struck down.

Conclusion

Delegated or subordinate legislation means rules of law made under the authority of an Act of Parliament. Although law making is the function of legislature, it may, by a statute, delegate its power to other bodies or persons. The statute which delegates such power is known as Enabling Act. By Enabling Act the legislature, lays down the broad guidelines and detailed rules are enacted by the delegated authority. Delegated legislation is permitted by the Indian Constitution. It exists in form of bye rules, regulations, orders, bye laws etc. There are many factors responsible for its increase: Parliament and State Legislature are too busy to deal with the increasing mass of legislations, which are necessary to regulate daily affairs. Modern legislation requires technicality and expertise knowledge of problems of various fields, our legislators, who are politicians are not expected to have such knowledge. Subordinate legislations are more flexible, quickly and easily amendable and revocable than ordinary legislation, in case of failure or defect in its application. When contingencies arise which were not forceable at the time of making it, subordinate legislation can pass an act quickly to handle them. Quick, effective and confidential decisions are not possible in body of legislatives. So, executives are delegated with power to make rules to deal with such situations. These are the main factors, besides many others, for the fast increase in delegated legislation today. Justice P B Mukerjee has stated "Delegated legislation is an expression which covers a multitude of confusion. It is an excuse for the legislators, a shield for the administrators and a provocation to the constitutional jurists. It is praised as a necessity and felt as inevitable in our world where social economic technological psychological and administrative speed outstrips the spacious and placid traditional legislative ideals and processes. It is criticized as an abdication of power by legislators and an escape from the duty imposed on them by voters of democracy. In England the king lost the legislative power at Runnymede and parliament lost legislative at stampede that followed since to provide the government for the country through administration and bureaucracy"¹¹

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