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# LEGITIMACY OF DELEGATED LEGISLATION IN MODERN GOVERNANCE: RECONCILING DEMOCRATIC ACCOUNTABILITY AND THE SEPARATION OF POWERS

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## ABSTRACT

In modern democratic governance, delegated legislation is an indispensable mechanism for efficient and responsive law-making, enabling governments to address complex regulatory challenges through executive rule-making under parliamentary authorization. This paper explores the legitimacy of delegated legislation, examining its legal foundations, necessity, oversight mechanisms, and inherent risks, with a primary focus on India in modern governance. Through an analysis of constitutional provisions, statutory frameworks, and judicial precedents, the study underscores that while delegated legislation enhances administrative flexibility and expertise, it raises significant concerns about democratic accountability and the separation of powers. Key findings emphasize the critical role of controls such as parliamentary scrutiny, judicial review, and public consultation in mitigating executive overreach and ensuring constitutional compliance. The paper proposes reforms—including mandatory public consultation, clearer delegation clauses in parent acts, and periodic review mechanisms—to strengthen transparency and accountability. By balancing efficiency with robust oversight, delegated legislation can remain a vital governance tool while upholding democratic principles and the rule of law in contemporary legal systems.

**Keywords:** Rule of Law, Separation of Powers, Delegated Legislation, Judicial Oversight, Statutory Limits.

## Introduction

In modern democratic governance, delegated legislation has become a pivotal tool for ensuring efficient and responsive law-making. As governments grapple with increasingly complex administrative and regulatory challenges, legislatures often delegate limited legislative powers to executive authorities, regulatory bodies, and local governments. This process allows for specialized expertise, adaptability, and flexibility in rule-making while ensuring that Parliament retains ultimate legislative authority over delegated laws.

Delegated legislation, also known as subsidiary or subordinate legislation, derives its legitimacy from an enabling Act passed by the legislature. It grants designated authorities the power to create specific legal provisions within the framework of primary legislation. Such laws can take various forms, including rules, regulations, orders, by-laws, standards, and guidelines—each serving a distinct purpose within the legal and administrative framework.

This system allows governments to respond swiftly to new developments, adjust administrative details without unnecessary legislative delays, and regulate highly technical areas with expert input.

However, despite its practical benefits, delegated legislation raises critical concerns about democratic accountability and the separation of powers. The delegation of law-making authority to non-elected officials can lead to executive overreach, a lack of legislative scrutiny, and potential abuse of discretionary power. To mitigate these risks, most legal systems implement parliamentary oversight, judicial review, and public consultation mechanisms to ensure that delegated legislation remains constitutionally valid, transparent, and aligned with the principles of rule of law.

This paper explores the legitimacy of delegated legislation, examining its legal foundations, necessity, oversight mechanisms, and potential risks. It aims to address the fundamental question:

***How can the legitimacy of delegated legislation be ensured while maintaining democratic accountability and the separation of powers in modern governance?***

By analysing global best practices, judicial precedents, and constitutional safeguards, this study seeks to provide a comprehensive evaluation of the role of delegated legislation in

contemporary legal systems.

### **The Historical Foundations of Delegated Legislation**

Delegated legislation refers to laws made by subordinate authorities under powers conferred by the primary legislature. This framework is designed to facilitate efficient governance, particularly in areas requiring technical expertise or urgent regulatory intervention.<sup>1</sup> However, the legitimacy of such delegation depends on mechanisms that ensure transparency, accountability, and adherence to constitutional principles.

The origins of delegated legislation can be traced to the **Statute of Proclamations (1539)** under Henry VIII, which controversially allowed the monarchy to issue proclamations with legislative force. Though repealed in 1547, it set a precedent for future delegations of legislative power. The Industrial Revolution and the World Wars further reinforced the necessity of delegated legislation, as rapid social and economic transformations demanded specialized regulations beyond the scope of parliamentary deliberations.

While delegated legislation enhances efficiency and adaptability, its potential for abuse necessitates robust oversight mechanisms. Modern systems employ several safeguards:

- **Parliamentary Control:** Legislatures retain the power to approve, amend, or repeal delegated legislation, though the extent of scrutiny varies across jurisdictions.
- **Judicial Review:** Courts play a critical role in assessing whether delegated powers exceed constitutional limits.
- **Public Participation:** Consultation processes can enhance transparency and prevent arbitrary rule-making.

These mechanisms are fundamental in addressing concerns about the erosion of democratic accountability and ensuring that delegated legislation remains within its constitutional bounds.

### **The Adaptation of Delegated Legislation in India**

In India, the evolution of delegated legislation is deeply intertwined with two foundational

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<sup>1</sup> Malta Media, "Concerns Rise Over New Malta Planning Amendments", October 15, 2023, available at <https://maltamedia.com/concernsrise-over-new-malta-planning-amendments/> (accessed on October 15, 2023).

doctrines: The Rule of Law and the Separation of Powers. These principles not only shape the scope of legislative delegation but also provide the necessary safeguards to prevent executive overreach.

The Indian Constitution, influenced by both British and American legal traditions, establishes a framework where delegated legislation operates under judicial oversight and legislative control. The Rule of Law ensures that all executive actions, including delegated rule-making, comply with constitutional mandates, while the doctrine of Separation of Powers maintains institutional balance by preventing excessive concentration of power within the executive. Through constitutional provisions, judicial precedents, and parliamentary scrutiny, India has developed mechanisms to regulate and legitimize delegated legislation, ensuring it aligns with democratic governance.

### ***Influence of Rule of Law on Delegated Legislation***

India's administrative law is heavily influenced by the Rule of Law (ROL), inherited from British legal traditions. In the context of delegated legislation, ROL ensures that executive rulemaking does not exceed statutory limits and remains subject to judicial scrutiny.

### ***Key Constitutional Safeguards***

- <sup>2</sup>**Article 14:** Guarantees equality before the law and equal protection of laws, preventing arbitrary state action.
- <sup>3</sup>**Article 21:** Expands the concept of due process and personal liberty, ensuring fairness in administrative actions.
- <sup>4</sup>**Article 226:** Empowers High Courts to issue writs against administrative actions, reinforcing judicial review.

### ***Judicial Interpretation and Evolution***

The Rule of Law in India has evolved through landmark Supreme Court rulings, ensuring that

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<sup>2</sup> Constitution of India, Art. 14

<sup>3</sup> Constitution of India, Art. 21

<sup>4</sup> Constitution of India, Art. 226

administrative actions remain within constitutional limits:

- <sup>5</sup>**Kesavananda Bharati v. State of Kerala (1973)**: Established the Basic Structure Doctrine, ensuring that Rule of Law remains an immutable constitutional principle.
- <sup>6</sup>**Maneka Gandhi v. Union of India (1978)**: Expanded Article 21, mandating that executive decisions must be just, fair, and reasonable, reinforcing due process in administrative law.
- <sup>7</sup>**I.R. Coelho v. State of Tamil Nadu (2007)**: Strengthened judicial supremacy, ruling that fundamental rights cannot be circumvented even through constitutional amendments.

These rulings highlight the judiciary's role in maintaining the legitimacy of delegated legislation by ensuring that executive rule-making adheres to constitutional boundaries.

### <sup>8</sup>*Separation of Powers and Delegated Legislation*

India follows a functional rather than rigid Separation of Powers (SOP), allowing limited interdependence among the three organs while maintaining checks and balances on delegated legislation.

### *Key Constitutional Provisions on Separation of Powers*

- <sup>9</sup>**Article 50**: Mandates the separation of the judiciary from the executive, ensuring judicial independence.
- <sup>10</sup>**Article 245**: Defines legislative competence, limiting Parliament's ability to encroach upon executive or judicial functions.

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<sup>5</sup> AIR 1973 SC 1461

<sup>6</sup> 1978 AIR 597, 1978 SCR (2) 621

<sup>7</sup> I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1

<sup>8</sup> Legal Wires Team, "The Principle of Separation of Powers", Legal Wires, February 15, 2023, available at <https://legalwires.com/lex-o-pedia/the-principle-of-separation-of-powers/> (accessed on October 15, 2023).

<sup>9</sup> Constitution of India, Art. 50

<sup>10</sup> Constitution of India, Art. 245

### *Judicial Evolution of SOP in India*

Indian courts have played a critical role in defining and enforcing Separation of Powers:

- <sup>11</sup>**Indira Nehru Gandhi v. Raj Narain (1975)**: Affirmed that Separation of Powers is a part of the Basic Structure Doctrine, preventing excessive executive or legislative dominance.
- <sup>12</sup>**Kesavananda Bharati v. State of Kerala (1973)**: Ensured that the three organs of the state operate independently, without arbitrary interference.

### **Practical Implications in Indian Administrative Law:**

- **Judicial Oversight:** Courts review the validity of delegated legislation to prevent excessive delegation and ensure adherence to constitutional principles.
- **Parliamentary Control:** The legislature retains supervisory powers through scrutiny committees and mandatory approval requirements.

Delegated legislation is vital for modern governance, enabling the executive to make detailed regulations under primary legislation. Its legitimacy hinges on statutory safeguards ensuring oversight and judicial review. In India, the principles of Rule of Law and Separation of Powers shape the constitutional framework governing delegation. The judiciary upholds legal boundaries, while constitutional provisions regulate executive rule-making, balancing efficiency with democratic accountability. These safeguards define legislative delegation, prevent executive overreach, and ensure compliance with fundamental rights, preserving the integrity of democratic institutions.

### **The Growth of Delegated Legislation & Associated Concerns**

As governance becomes more complex, delegated legislation has expanded to address challenges in areas such as cybersecurity, environmental regulation, economic policy, and public health.

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<sup>11</sup> (1975) 2 SCC 159

<sup>12</sup> AIR 1973 SC 1461

### ***Key Reasons for the Growth of Delegated Legislation***

**Parliamentary Time Constraints** – The legislative workload in contemporary democracies is extensive, encompassing budget approvals, policy deliberations, and oversight functions. Drafting and scrutinizing detailed regulations for every policy area would overwhelm parliamentary capacities. Delegated legislation alleviates this burden by allowing the executive to create specific rules under broad statutory frameworks, ensuring the efficient implementation of laws.

**Technical Expertise** – Many policy domains require specialized knowledge that generalist legislators may lack. Areas such as finance, cybersecurity, medicine, and environmental protection involve complex technicalities. By delegating rule-making to expert bodies and regulatory authorities, governments ensure that regulations are informed by subject-matter expertise, thereby enhancing the quality and efficacy of governance.

**Flexibility & Responsiveness** – Unlike primary legislation, which often involves lengthy deliberation and amendment procedures, delegated legislation provides flexibility to adapt swiftly to evolving socio-economic and technological conditions. This responsiveness is particularly valuable in dynamic fields such as digital regulation, financial markets, and public health, where immediate adjustments may be necessary.

**Emergency Situations** – Crisis situations such as pandemics, economic recessions, and national security threats demand prompt regulatory action. Relying solely on the traditional legislative process may delay crucial measures. Delegated legislation empowers the executive to implement emergency regulations—such as lockdowns, financial controls, and defense measures—without waiting for full parliamentary approval, thereby ensuring timely responses.

**Pilot Testing & Experimentation** – Governments often introduce regulations on a limited scale before full implementation. Delegated legislation allows for experimental policymaking, where new regulatory measures can be tested in select jurisdictions or industries. This approach enables policymakers to assess the impact of regulations, make necessary adjustments, and minimize unintended consequences before nationwide enforcement.

Delegated legislation offers efficiency and adaptability, its unchecked use poses significant constitutional risks.

The following *concerns* underscore the need for a balanced approach to delegation.

**Risk of Executive Overreach** – Excessive delegation may lead to an imbalance of power, weakening parliamentary authority and concentrating rule-making powers in the executive. If not properly controlled, this could result in bureaucratic dominance, reducing legislative oversight and eroding democratic principles.

**Lack of Legislative Scrutiny** – Parliamentary committees, such as the Committee on Subordinate Legislation, are tasked with reviewing delegated legislation. However, in many jurisdictions, these committees lack the resources, time, or political will to thoroughly scrutinize executive rule-making. Weak legislative oversight may lead to regulations that exceed statutory intent, infringe on fundamental rights, or serve bureaucratic rather than public interests.

**Judicial Review Limitations** – Courts have the authority to strike down ultra vires (beyond legal authority) delegated legislation. However, judicial review has inherent limitations:

- Litigation is costly and time-consuming, making it difficult for individuals to challenge unfair regulations.
- Courts may adopt a deferential approach toward executive rule-making, particularly in technical matters.
- By the time courts intervene, the regulation may have already caused significant harm, allowing the executive to exercise unchecked control.

**Transparency & Public Participation** – Unlike primary legislation, which undergoes parliamentary debate and public discourse, delegated legislation is often framed without adequate stakeholder consultation. The lack of transparency undermines democratic accountability and may result in regulations that disproportionately benefit certain interest groups or impose unnecessary burdens on citizens.

While constitutional and statutory provisions establish the framework for delegated legislation in India, their practical application and legitimacy have been continually tested through judicial scrutiny. The courts have played a crucial role in interpreting these provisions, ensuring that delegated powers do not exceed constitutional limits or undermine the democratic process.



Through landmark rulings, the judiciary has reinforced the principles of accountability, reasonableness, and non-arbitrariness in executive rule-making. A critical analysis of these judicial pronouncements provides deeper insights into how the courts have shaped the evolution of delegated legislation, preventing excessive delegation while maintaining governance efficiency.

### **The Constitutional Basis for Delegated Legislation**

So far, we know that delegated legislation, being an essential mechanism in modern governance, enables the executive to formulate detailed rules and regulations while operating under legislative supervision. Although the Indian Constitution does not explicitly mention delegated legislation, it is implicitly recognized through various provisions that allow Parliament and State Legislatures to delegate limited legislative authority to the executive and statutory bodies. However, the constitutionality of delegated legislation hinges on judicial safeguards, ensuring that such delegation does not violate fundamental principles.

One such fundamental principle is the <sup>13</sup>Separation of Powers, as emphasized in Article 50, which ensures that the legislative, executive, and judicial functions remain distinct to prevent the concentration of power in a single authority. If delegated legislation grants excessive rulemaking powers to the executive, it disrupts this balance, leading to potential executive overreach. For instance, in **Indira Gandhi v. Raj Narain (1975)**,<sup>14</sup> the Supreme Court struck down a constitutional amendment that sought to place the Prime Minister's election beyond judicial review, reaffirming that no organ of the state can encroach upon the functions of another. This ruling underscores the need to limit delegation to prevent the executive from exercising unchecked authority, thereby maintaining the constitutional framework.

Similarly, the Basic Structure Doctrine<sup>15</sup>, established in **Kesavananda Bharati v. State of Kerala (1973)**, acts as a safeguard against legislative actions, including delegation, that may undermine democracy, judicial review, or legislative supremacy. If a law delegates excessive legislative power to the executive without clear guidelines, it risks altering the Constitution's fundamental structure. Moreover, in **Re Delhi Laws Act, 1951**,<sup>16</sup> the Supreme Court laid down

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<sup>13</sup> Constitution of India, Art. 50

<sup>14</sup> (1975) 2 SCC 159

<sup>15</sup> AIR 1973 SC 1461

<sup>16</sup> In Re The Delhi Laws Act, 1912 vs The Part C States (Laws) Act, 1951 AIR 332

the principle that while delegation is permissible, it cannot result in the abdication of essential legislative functions. The legislature must provide clear policy guidelines and safeguards, ensuring that the executive does not assume unrestricted law-making power.

To understand the legitimacy of delegated legislation, it is essential to trace its evolution before and after independence, analyzing judicial pronouncements that shaped its constitutional validity.

### ***Pre-Independence Evolution of Delegated Legislation***

Before independence, delegated legislation was primarily governed by the Government of India Act, 1935, which conferred broad legislative powers on the executive. Key judicial decisions recognized this form of delegation but imposed certain conditions to prevent excessive executive authority.

### ***Key Judicial Precedents***

1. <sup>17</sup>**Queen v. Burah (1878)**: In this landmark case, the Privy Council upheld the concept of conditional legislation, ruling that while the Legislative Council of India could empower the Lieutenant-Governor of Bengal to determine the applicability of laws in certain areas, it could not delegate the core function of law-making. The court clarified that allowing the executive to enforce laws under specific conditions was valid, as long as the legislature retained the primary power to create laws. This principle remains a key limitation on delegated legislation, ensuring that law-making authority is not entirely transferred to the executive.
3. <sup>18</sup>**King v. Banwari Lal Sharma**: This case reaffirmed limited delegation, holding that the Governor-General's emergency powers to create special courts were a valid exception rather than an unconstitutional delegation. The court ruled that while the executive could enforce laws and respond to emergencies, it could not create entirely new laws without legislative approval. This judgment emphasized judicial scrutiny over delegated legislation, ensuring that executive actions remain within legislative

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<sup>17</sup> (1878) ILR 3CAL64

<sup>18</sup> (1945)47BOMLR260

boundaries.

Thus, pre-independence jurisprudence permitted executive rule-making but imposed checks to ensure that the legislature remained the supreme law-making body.

### ***Post-Independence Constitutional Framework & Judicial Oversight***

With the adoption of the Indian Constitution in 1950, the framework of delegated legislation evolved significantly. The Constitution permits delegation, but certain restrictions were introduced through judicial pronouncements to ensure accountability and democratic oversight. *Landmark Judicial Decisions:*

<sup>19</sup>**Re Delhi Laws Act (1951):** When discussing the constitutional limits of delegated legislation in India, Re Delhi Laws Act (1951) stands out as a defining case that clarified how far the legislature can go in transferring its powers to the executive. The case emerged from a challenge to the President's power to extend pre-existing laws to Delhi under Article 372 of the Constitution. The key question before the Supreme Court was: Can the legislature delegate law-making authority without violating constitutional principles?

The Supreme Court's judgment, though split, laid down two fundamental limitations on delegated legislation:

#### ***o Essential Legislative Functions Cannot Be Delegated***

The Court ruled that core legislative functions—such as formulating policies, principles, and fundamental provisions—must remain with the legislature. While the executive can be given rule-making powers for implementation, it cannot be allowed to create laws independently.

#### ***o Delegation Must Not Be Excessive***

Recognizing the need for administrative flexibility, the Court allowed delegation but held that it must be within defined limits. If too much power is transferred, it could lead

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<sup>19</sup> In Re The Delhi Laws Act, 1912 vs The Part C States (Laws) Act, 1951 AIR 332 <sup>20</sup> AIR 1954 SUPREME COURT 569

to an unconstitutional abdication of legislative authority.

Think about it this way—can a legislature hand over all its law-making powers to the executive and just step aside? That’s exactly the concern the Supreme Court addressed in <sup>20</sup>**Raj Narain Singh v. Chairman, Patna Administration Committee (1954)**. The Court agreed that delegating administrative functions to local bodies was permissible, as long as the legislature retained ultimate control. However, it issued a crucial warning:

Delegation should never cross the line into abdication.

In 1973, the Supreme Court of India delivered one of its most significant rulings **Keshavananda Bharati v. State of Kerala**<sup>21</sup>, a case that redefined constitutional amendments and the limits of parliamentary power. The judgment introduced the Basic Structure Doctrine, a legal principle that prevents Parliament from altering the core framework of the Constitution, even while exercising its amending power under Article 368. .

The Court ruled that while Parliament can amend any part of the Constitution, it cannot destroy its essential features, such as separation of powers, judicial review, democracy, and federalism. This decision placed a much-needed check on excessive executive and legislative power, ensuring that no government could override fundamental constitutional principles for political convenience.

By reinforcing the role of the judiciary as the guardian of the Constitution, the ruling in *Keshavananda Bharati* preserved judicial review as a mechanism to strike down unconstitutional amendments. The case remains a landmark precedent, safeguarding the Indian Constitution from arbitrary changes and ensuring that its foundational values remain protected across generations.

These judgments affirm that while delegation is necessary, it cannot override constitutional safeguards protecting the rule of law, fundamental rights, and legislative supremacy.

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<sup>20</sup> AIR 1954 SUPREME COURT 569

<sup>21</sup> AIR 1973 SC 1461

## India: Constitutional & Statutory Provisions Governing Delegated Legislation

Delegated legislation enables the executive to formulate rules within a statutory framework for efficient governance. Though not explicitly mentioned in the Indian Constitution, its legitimacy is inferred through provisions like:

### A. Constitutional Provisions Governing Delegated Legislation

India's Constitution explicitly recognizes delegated legislation, ensuring that executive rulemaking remains within constitutional limits. The following provisions are critical in regulating the scope and application of delegated powers:

#### 1. <sup>22</sup>Article 13(3)(a) – Definition of "Law"

Delegated legislation falls within the definition of "law," meaning that rules, regulations, and notifications must comply with fundamental rights. If a delegated rule violates these rights, courts have the power to declare it unconstitutional.

#### 2. <sup>23</sup>Article 312 – Creation of All India Services through Delegated Legislation

Parliament is empowered to establish new All India Services (such as IAS and IPS) through legislation, with the executive framing service rules and conditions. However, these rules remain subject to parliamentary oversight to prevent misuse.

#### 3. <sup>24</sup>Articles 245 & 246 – Legislative Competence & Delegation

These articles define legislative competence under the Union, State, and Concurrent Lists. Delegated legislation must adhere to the scope of the parent legislation. Any subordinate rule exceeding these boundaries or conflicting with legislative lists can be struck down as *ultra vires*, as seen in *State of Tamil Nadu v. K. Shyam Sunder (2011)*.<sup>25</sup>

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<sup>22</sup> Constitution of India, Art. 13(3)(a)

<sup>23</sup> Constitution of India, Art. 312

<sup>24</sup> Constitution of India, Art. 245 & 246

<sup>25</sup> AIR 2011 SUPREME COURT 3470

#### 4. <sup>26</sup>Articles 323A & 323B – Role of Tribunals in Delegated Authority

These provisions empower the creation of administrative tribunals that exercise quasi-judicial functions through delegated legislation. Tribunals such as the Central Administrative Tribunal (CAT) operate under statutes enacted by Parliament, demonstrating a functional overlap in Separation of Powers.

### **B. Several statutes regulate the process, scope, and limitations of delegated legislation in India:**

#### **1. General Clauses Act, 1897<sup>27</sup>**

Sections 20 to 24 provide interpretation rules to ensure consistency in rule-making. Even if a statute is repealed, its subordinate rules may continue unless explicitly revoked, preventing administrative uncertainty.

#### **2. The Commissions of Inquiry Act, 1952<sup>28</sup>**

This Act empowers the government to establish fact-finding commissions through delegated authority, playing a key role in investigating public grievances and policy failures.

#### **3. The Essential Commodities Act, 1955<sup>29</sup>**

Grants the executive broad rule-making powers to control the supply, pricing, and distribution of essential goods. However, the delegation of such authority has often raised concerns about excessive executive power, leading to legal challenges over arbitrary decisions.

#### **4. The Environment Protection Act, 1986<sup>30</sup>**

Authorizes the central government to frame environmental rules, pollution control standards, and industrial regulations. In *A. P. Pollution Control Board v. Prof. M. V.*

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<sup>26</sup> Constitution of India, Art. 323A & 323B

<sup>27</sup> General Clauses Act, 1897

<sup>28</sup> The Commissions of Inquiry Act, 1952

<sup>29</sup> The Essential Commodities Act, 1955

<sup>30</sup> The Environment Protection Act, 1986

*Nayudu (1999)*<sup>31</sup>, the Supreme Court emphasized the need for stricter environmental regulations while ensuring parliamentary scrutiny over executive rule-making.

### **5. Rules of Procedure & Conduct of Business in Parliament (Committee on Subordinate Legislation)**

Both Lok Sabha and Rajya Sabha have committees to scrutinize executive rule-making, ensuring that delegated rules conform to the parent Act and preventing arbitrary executive actions.

Courts have consistently intervened to prevent executive overreach into legislative authority, maintaining a delicate balance between flexibility and accountability in modern governance. The judiciary has played a pivotal role in defining the permissible scope of delegation while upholding democratic principles.

Through landmark judgments, courts have shaped the discourse on delegated legislation, emphasizing the need for democratic accountability and the separation of powers. The following cases illustrate key judicial pronouncements on delegated legislation in contemporary times, particularly in the context of maintaining constitutional balance and governance integrity.

### **Judicial Recognition of Delegated Legislation**

The increasing complexity of modern governance has necessitated a shift towards delegated legislation, allowing the executive to fill in the details where parliamentary law-making falls short. In an era characterized by rapid technological advancements, economic fluctuations, and evolving societal needs, legislative bodies often struggle to anticipate and address every contingency within the rigid framework of primary legislation. Consequently, delegation has emerged as a pragmatic tool, enabling governments to maintain administrative efficiency and regulatory responsiveness. However, this necessity must be meticulously balanced with constitutional principles to ensure that legislative power is not unduly ceded to the executive, thereby upholding the doctrine of separation of powers and democratic accountability.

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<sup>31</sup> AIR 1999 SUPREME COURT 812

A critical examination of jurisprudence reveals that courts have consistently upheld delegated legislation as a vital governance tool, provided it functions within constitutional constraints. In <sup>32</sup>*State of Kerala v. Moushmi Ann Jacob (2025)*, the judiciary acknowledged that while the legislature may delegate certain functions, it cannot abdicate its core responsibilities. This principle underscores that delegated legislation serves as a supplement, rather than a substitute, for primary legislative enactments. The ruling reinforces that adaptability in governance should not come at the cost of democratic legitimacy. The judgment further elucidates that the delegation of legislative power must always be accompanied by adequate safeguards to prevent its misuse, ensuring that executive actions remain within the prescribed limits of parliamentary authorization.

Similarly, in <sup>33</sup>*Dharani Sugars and Chemicals Limited v. Union of India (2019)*, the Supreme Court recognized that modern governance necessitates a degree of flexibility. The case highlighted that economic and administrative exigencies often require swift decision-making, which cannot always be achieved through parliamentary procedures alone. However, while allowing for such flexibility, the court also reinforced the necessity of clear statutory guidelines to prevent unchecked executive discretion. This ruling is particularly significant in the context of economic regulations, where swift responses to market fluctuations and financial crises demand timely interventions by the executive.

In *Vivek Narayan Sharma (2023)*<sup>34</sup>, the judiciary further acknowledged the indispensable role of delegated legislation in implementing broad policy frameworks. The court observed that while the legislature lays down general principles, the executive is best placed to execute them effectively, given its proximity to the practical realities of administration. However, the judgment also reiterated that such delegation should not result in excessive autonomy for the executive, which could otherwise lead to a concentration of power undermining legislative intent. The ruling serves as a cautionary reminder that while delegation enhances governance efficiency, it must operate within statutory limits to preserve the balance of power.

Another significant decision is *Roger Mathew v. South Indian Bank Ltd. (2019)*<sup>35</sup>, where the court clarified that delegation must not lead to legislative abdication. Here, the ruling

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<sup>32</sup> INSC 255

<sup>33</sup> AIRONLINE 2019 SC 305

<sup>34</sup> Vivek Narayan Sharma v. Union of Indian, Writ Petition (Civil) No. 906 of 2016, (2023) SCC OnLine SC 1 (India).

<sup>35</sup> AIRONLINE 2019 SC 1514



established clear judicial limits on the scope of delegation, asserting that essential legislative functions must remain within the purview of the legislature. The court emphasized that the power to make fundamental policy choices cannot be transferred to the executive, as doing so would dilute the democratic mandate of elected representatives. The judgment reinforces the principle that delegation should be confined to technical and procedural aspects rather than substantive policy decisions.

The necessity of oversight was further emphasized in *M/S S.R.S Travels by its Proprietor K.T. Rajashekar v. Karnataka State Road Transport Corporation (2025)*<sup>36</sup>, where the court underscored that while efficiency is a crucial factor in delegated legislation, mechanisms must be in place to ensure accountability. The ruling highlights the importance of parliamentary and judicial checks in preventing excessive delegation and ensuring that the separation of powers remains intact. The court also examined the role of subordinate legislation in administrative decision-making, emphasizing that procedural fairness and transparency are paramount in the exercise of delegated powers.

Taken together, these judicial pronouncements reinforce the legitimacy of delegated legislation while underscoring the importance of constitutional safeguards. The courts have consistently maintained that delegation must be accompanied by clear statutory limitations, mechanisms for oversight, and adherence to the principles of natural justice. The evolution of jurisprudence in this domain reflects an ongoing effort to balance governance efficiency with democratic accountability, ensuring that the delegation of legislative power does not erode the foundational principles of constitutional governance.

Ultimately, while delegated legislation remains a crucial instrument for addressing the dynamic challenges of modern governance, it must be exercised with caution. Effective regulatory frameworks, robust parliamentary scrutiny, and judicial review are indispensable in maintaining the delicate equilibrium between legislative delegation and executive authority. The future of delegated legislation, therefore, lies in its ability to function as a facilitator of governance while steadfastly adhering to constitutional principles that safeguard democratic integrity and the rule of law.

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<sup>36</sup> SPL(c) No. -027833-027834 / 2011

## Judicial Constraints on Delegated Legislation

While courts have recognized the functional necessity of delegated legislation, they have also imposed strict limitations to ensure that executive rule-making does not encroach upon the legislative domain. Judicial scrutiny has played a pivotal role in maintaining the balance between necessary delegation and the protection of constitutional principles, particularly the separation of powers and democratic accountability.

In *Rajeev Suri v. Delhi Development Authority (2021)*,<sup>37</sup> the Supreme Court reaffirmed that subordinate legislation does not enjoy the same constitutional status as primary legislation. The case reinforced that delegated legislation must strictly conform to its enabling statute and broader constitutional principles, particularly Article 14, which ensures equality before the law. This ruling is significant in limiting the discretionary power of the executive and maintaining judicial oversight over delegated legislation. The judgment underscored that any executive rule-making must remain consistent with legislative intent and must not be used to create arbitrary classifications or discriminatory policies.

A similar stance was taken in *State of Kerala v. Moushmi Ann Jacob (2025)*<sup>38</sup>, where the court, while recognizing the necessity of delegation, warned against excessive delegation that could lead to the legislature relinquishing its primary functions. The judgment reiterated that statutory limits must be maintained to prevent executive overreach, reinforcing the doctrine that core legislative functions cannot be transferred in their entirety. The ruling emphasized that while procedural and administrative details may be delegated, the formulation of fundamental policy decisions must remain within the legislature's exclusive domain.

Another significant constraint was highlighted in *Association for Democratic Reforms v. Union of India (2024)*<sup>39</sup>, where the judiciary categorically held that delegated legislation must remain within the scope of the parent statute. The ruling stressed that the executive cannot assume an independent law-making role, thereby preserving the distinction between legislative intent and executive execution. This case serves as an important check against any attempts by the executive to bypass legislative scrutiny through excessive delegation. The court also

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<sup>37</sup> 2021 SCC OnLine SC 7

<sup>38</sup> 2025 INSC 255

<sup>39</sup> 2024 INSC 113

pointed out that ensuring transparency in the exercise of delegated power is crucial for maintaining public trust in governance.

The risk of excessive delegation was particularly evident in *Vivek Narayan Sharma (Demonetisation Case, 2023)*,<sup>40</sup> where the court invalidated an overbroad grant of legislative power to the executive. The ruling established that delegated legislation must strictly conform to the limitations set by the parent statute, preventing the executive from exercising unchecked authority under the guise of legislative delegation. This decision reaffirmed the judiciary's role as a safeguard against executive overreach. It also highlighted the importance of ensuring that executive actions taken under delegated authority do not result in fundamental changes to policy without adequate parliamentary scrutiny.

In *Lalit Kumar Jain v. Union of India (2021)*<sup>41</sup>, the Supreme Court further reinforced that delegated legislation must not alter the fundamental character of the enabling statute. The case underscored that delegation cannot be used as a means to introduce substantive legislative changes that would otherwise require parliamentary approval. This decision is a crucial reaffirmation of the principle that while delegation can facilitate governance, it cannot serve as a means of circumventing legislative processes. The ruling serves as a warning against attempts to use executive rule-making as a backdoor method to introduce significant legal changes without the requisite legislative debate and approval.

The jurisprudence surrounding delegated legislation reflects a judicial effort to balance governance efficiency with constitutional propriety. Courts have consistently acknowledged the necessity of delegation while imposing strict safeguards to ensure democratic accountability and prevent legislative abdication. A comparative analysis of judicial pronouncements highlights both the functional indispensability of delegated legislation and the risks posed by its unchecked expansion. Collectively, these cases illustrate a consistent judicial approach to ensuring that delegated legislation operates within constitutional and statutory limits. While delegation is essential for efficient governance, courts have emphasized that it must be exercised with restraint and remain subject to oversight. Any attempt to use delegation to bypass legislative authority is met with judicial intervention, reaffirming the supremacy of parliamentary law-making. The evolving jurisprudence on this issue underscores the need for

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<sup>40</sup> *Vivek Narayan Sharma v. Union of Indian*, Writ Petition (Civil) No. 906 of 2016, (2023) SCC OnLine SC 1 (India).

<sup>41</sup> AIRONLINE 2021 SC 402

a well-defined framework that preserves the integrity of the legislative process while granting the executive sufficient leeway to implement laws effectively.

### Critical Analysis

A key point of comparison between the judicial perspectives on delegated legislation lies in their emphasis on statutory limits and oversight. While cases such as *State of Kerala v. Moushmi Ann Jacob (2025)*<sup>42</sup> and *Dharani Sugars and Chemicals Limited v. Union of India (2019)*<sup>43</sup> highlight the necessity of delegation for governance efficiency, they also reinforce that it must be exercised within clear statutory boundaries. These rulings underscore that delegation serves as an administrative tool rather than an alternative to parliamentary lawmaking.

Conversely, cases such as *Rajeev Suri v. Delhi Development Authority (2021)*<sup>44</sup> <sup>45</sup> and *Association for Democratic Reforms v. Union of India (2024)*<sup>46</sup> emphasize that the constitutional status of delegated legislation remains subordinate to primary legislation and must always conform to its enabling statute and fundamental rights principles.

Another critical area of judicial analysis is the risk of excessive delegation. The ruling in *Vivek Narayan Sharma (Demonetisation Case, 2023)*<sup>47</sup> invalidated an overbroad grant of legislative power to the executive, reinforcing the need for a strict interpretation of delegated authority. Similarly, *Lalit Kumar Jain v. Union of India (2021)* cautioned against using delegation as a means to alter the fundamental character of primary legislation, ensuring that substantive policy changes remain within the purview of the legislature. These cases serve as a judicial check against executive overreach, ensuring that delegation does not become a tool for circumventing legislative scrutiny.

From an analytical standpoint, it is evident that the legitimacy of delegated legislation can only be ensured if it remains within well-defined statutory limits and is subject to robust oversight mechanisms. Judicial scrutiny plays a critical role in this regard, ensuring that delegation does

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<sup>42</sup> INSC 255

<sup>43</sup> AIRONLINE 2019 SC 305

<sup>44</sup> Transferred Case (Civil) No. 229 of 2020

<sup>45</sup> INSC 113

<sup>46</sup> Vivek Narayan Sharma v. Union of Indian, Writ Petition (Civil) No. 906 of 2016, (2023) SCC OnLine SC 1 (India).

<sup>47</sup> AIRONLINE 2021 SC 402

not lead to an excessive concentration of power in the executive branch. Furthermore, parliamentary oversight mechanisms, including sunset clauses and mandatory reporting requirements, can strengthen accountability and reinforce the separation of powers.

Moving forward, a structured approach that includes clear statutory limitations, transparency measures, and active judicial review will be essential in preserving the legitimacy of delegated legislation. The challenge lies in striking the right balance between legislative intent and executive flexibility—ensuring that delegation enhances governance efficiency without compromising democratic principles.

### **Contemporary Developments in Delegated Legislation in India**

The legitimacy of DL depends on maintaining a balance between flexibility and accountability, ensuring that such delegation does not undermine legislative authority, democratic principles, and constitutional mandates. Recent judicial pronouncements have shaped the contours of legitimate delegated legislation in India.

Delegated legislation plays a crucial role in modern governance by allowing the executive to respond to unforeseen and complex issues. However, it must be exercised within constitutional boundaries to prevent the erosion of legislative authority. Recent judicial pronouncements have shaped the evolving legal landscape by emphasizing the necessity, limitations, scrutiny, transparency, and accountability of delegated legislation.

#### ***1. Necessity of Delegated Legislation***

The Supreme Court has recognized that delegated legislation is indispensable in governance due to the legislature's inability to foresee every potential issue. In *The State of Kerala v. Moushmi Ann Jacob (2025)*<sup>48</sup>, the Court recognized that while the legislature holds plenary power, it cannot foresee every possible circumstance. Therefore, delegation is necessary to address operational details while ensuring adherence to legislative intent. Similarly, in *Vivek Narayan Sharma (Demonetisation Case) v. Union of India (2023)*<sup>49</sup>, the Court upheld the necessity of delegated legislation, particularly in situations demanding swift policy decisions for economic and social welfare measures. The significance of delegation was also highlighted

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<sup>48</sup> Transferred Case (Civil) No. 229 of 2020

<sup>49</sup> 47 CIVIL APPEAL NO. 2912 OF 2022 [Arising out of Special Leave Petition (Civil) No.26855 of 2018]

in *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Asstt. Commissioner Of Sales Tax And Others* (1973)<sup>50</sup>, where the Court emphasized its role in modern welfare states, where flexibility and expediency are paramount. Likewise, in *Ramesh Birch And Others v. Union Of India And Others* (1989)<sup>51</sup>, the ruling reinforced the inevitability of delegated legislation, given the practical limitations of the legislature in handling intricate and technical matters.

## **2. Limits on Delegation & Essential Legislative Functions**

Although delegation is necessary, the judiciary has consistently ruled that essential legislative functions (such as policy formulation and fundamental principles of law) cannot be delegated. *The State of Kerala v. Moushmi Ann Jacob* (2025)<sup>52</sup> reaffirmed that while delegation is permissible, excessive delegation that results in an abdication of legislative responsibility is unconstitutional. This principle traces its origins to the landmark *Re: Delhi Laws Act Case* (1951),<sup>53</sup> which established the doctrine that Parliament cannot delegate its essential legislative functions, laying the foundation for subsequent rulings on delegated legislation. Similarly, in *The Registrar Of Cooperative Societies, Trivandrum And Another v. K. Kunjabmu And Others* (1979)<sup>54</sup>, the Court reiterated that while the legislature has the authority to delegate certain powers, it cannot relinquish its core functions, thereby ensuring a balance between legislative and executive authority.

## **3. Judicial Scrutiny of Subordinate Legislation**

The courts have consistently emphasized that subordinate legislation does not enjoy the same presumption of constitutionality as primary legislation and must strictly conform to the enabling statute. In *Rajeev Suri v. Delhi Development Authority* (2021)<sup>52</sup>, the Supreme Court ruled that subordinate legislation can be struck down if it is manifestly arbitrary or inconsistent with the parent Act, reinforcing the judiciary's role in ensuring that delegated powers are exercised lawfully. Similarly, in *Dental Council of India (S) v. Biyani Shikshan Samiti and Another* (2022)<sup>53</sup>, the Court clarified that delegated legislation must align with the intent of the enabling legislation and cannot override statutory provisions. Further, in *Bhaskar Shrachi Alloys Limited And Others v. Damodar Valley Corporation And Others* (2018)<sup>54</sup>, the Court

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<sup>50</sup> 1974 AIR 1660, 1974 SCR (2) 879

<sup>51</sup> 1990 AIR 560

<sup>52</sup> Transferred Case (Civil) No. 229 of 2020

<sup>53</sup> CIVIL APPEAL NO. 2912 OF 2022 [Arising out of Special Leave Petition (Civil) No.26855 of 2018]

<sup>54</sup> AIR 2018 SUPREME COURT 3731

underscored the importance of judicial oversight in ensuring that delegated legislation operates within the framework established by the legislature, thereby preventing executive overreach.

#### **4. Public Participation and Transparency**

A growing trend in judicial pronouncements highlights the need for public participation and transparency in the making of delegated legislation. In *Rajeev Suri v. Delhi Development Authority* (2021),<sup>55</sup> the Court emphasized that public consultation enhances the legitimacy and acceptance of delegated legislation, thereby promoting democratic accountability. Similarly, in *Indian Express Newspapers v. Union of India* (1985)<sup>59</sup>, the Court reaffirmed that delegated legislation must adhere to principles of reasonableness and should not be arbitrary or oppressive. These rulings reflect the judiciary's evolving approach toward ensuring that delegated powers are exercised in a manner consistent with democratic principles and public interest.

#### **5. Balancing Flexibility and Accountability**

While flexibility in governance is essential, delegated legislation must be exercised within constitutional limits. In *Vivek Narayan Sharma (Demonetisation Case) v. Union of India* (2023)<sup>56</sup>, the Court upheld the principle that delegated legislation enables governments to respond swiftly to economic challenges but must always be grounded in legislative intent. Similarly, in *Agricultural Market Committee v. Shalimar Chemical Works Ltd.* (1997)<sup>57</sup>, the Court ruled that delegated legislation should not impose unreasonable restrictions beyond what is permitted by the parent statute. These decisions reaffirm the judiciary's role in ensuring that delegation remains a tool for efficient governance rather than a means of circumventing constitutional and statutory constraints.

#### **6. Judicial Review and Legislative Intent**

The courts have consistently maintained that delegated legislation must conform to legislative intent and cannot exceed the powers conferred by the enabling statute. In *Dental Council of India (S) v. Biyani Shikshan Samiti and Another* (2022)<sup>58</sup>, the Court reaffirmed that delegated

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<sup>55</sup> Transferred Case (Civil) No. 229 of 2020

<sup>56</sup> Transferred Case (Civil) No. 229 of 2020

<sup>57</sup> AIR 1997 SUPREME COURT 2502

<sup>58</sup> CIVIL APPEAL NO. 2912 OF 2022 [Arising out of Special Leave Petition (Civil) No.26855 of 2018]

legislation can be invalidated if it contravenes the Constitution or the enabling Act. Similarly, in *General Officer Commanding v. Subhash Chandra Yadav (1988)*<sup>59</sup>, the Supreme Court ruled that delegated legislation must align with constitutional principles and should not grant arbitrary powers to the executive. The foundational case of *Delhi Laws Act, 1912, In Re V. (1951)*<sup>60</sup> further established the boundaries of legislative delegation, asserting that while the legislature can empower others to make rules, it must retain ultimate control over the legislative framework. These rulings collectively reinforce the judiciary's role in preventing excessive delegation and ensuring adherence to constitutional and statutory limits.

Recent judicial trends underscore the importance of maintaining a delicate balance between flexibility and accountability in delegated legislation. While courts recognize its necessity, they continue to place clear limits on delegation to prevent executive overreach. The focus on judicial scrutiny, public participation, and adherence to legislative intent reflects a maturing legal framework that ensures democratic accountability in governance.

The evolving landscape of delegated legislation in India reflects an ongoing effort to balance administrative efficiency with constitutional safeguards. While recent judicial pronouncements have reaffirmed the necessity of delegation, they have also reinforced limits to prevent legislative abdication and executive overreach. Courts have increasingly emphasized the need for transparency, public participation, and adherence to statutory intent, shaping the future trajectory of delegated legislation. Against this backdrop, it becomes imperative to explore suggestions for strengthening its legitimacy, ensuring that delegation remains a tool for effective governance without compromising democratic accountability.

### **Suggestions for Strengthening the Legitimacy of Delegated Legislation**

To enhance the legitimacy of delegated legislation while ensuring democratic accountability, the following measures are proposed:

#### **1. Mandatory Public Consultation**

- It is recommended that all delegated legislation be subject to a structured public consultation process to enhance transparency and prevent arbitrary

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<sup>59</sup> 1988 AIR 876

<sup>60</sup> In Re The Delhi Laws Act, 1912 vs The Part C States (Laws) Act, 1951 AIR 332



executive action.

- Drawing from judicial precedents (*Rajeev Suri v. Delhi Development Authority, 2021*<sup>61</sup>; *Indian Express Newspapers v. Union of India, 1986*<sup>62</sup>), legislative frameworks should mandate stakeholder engagement and publish draft regulations for public scrutiny.
- Comparative models such as the **United States Administrative Procedure Act, 1946**,<sup>63</sup> which institutionalizes the notice-and-comment procedure, could serve as a reference for India.

## 2. Strengthening Parliamentary Oversight Mechanisms

- While India has a Committee on Subordinate Legislation, its powers should be expanded to include impact assessments and mandatory reviews.
- To prevent excessive delegation, it is crucial to enhance the role of parliamentary committees in scrutinizing subordinate legislation.
- The adoption of procedures similar to **UK's Statutory Instruments Act, 1946**<sup>64</sup>, where delegated legislation must be presented before Parliament for approval or annulment, would ensure greater accountability.

## 3. Defining Clearer Delegation Clauses in Parent Acts

- Drawing from *Re: Delhi Laws Act Case (1951)*<sup>65</sup> and *Kunjabmu v. Registrar of Cooperative Societies (1979)*<sup>66</sup>, a clear distinction should be maintained between permissible delegation and unconstitutional abdication of legislative responsibility.
- Parent statutes should explicitly define the scope, limits, and procedural

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<sup>61</sup> Transferred Case (Civil) No. 229 of 2020

<sup>62</sup> 986 AIR 515, 1985 SCR (2) 287

<sup>63</sup> United States Administrative Procedure Act, 1946

<sup>64</sup> UK's Statutory Instruments Act, 1946

<sup>65</sup> In Re The Delhi Laws Act, 1912 vs The Part C States (Laws) Act, 1951 AIR 332

<sup>66</sup> 1980 AIR 350, 1980 SCR (2) 260

safeguards of delegated powers to prevent overreach by the executive.

- Comparative legal systems, such as the United States' 'Non-Delegation Doctrine' (*Schechter Poultry Corp. v. United States, 1935*)<sup>67</sup>, highlight the need for stricter delegation limits in legislative drafting.

#### 4. Ensuring Judicial Vigilance

- Indian jurisprudence (*Rajeev Suri v. Delhi Development Authority, 2021*<sup>68</sup>; *Dental Council of India v. Biyani Shikshan Samiti, 2022*<sup>69</sup>) reinforces that delegated legislation must align with statutory intent and constitutional principles.
- Courts should continue to play an active role in reviewing the constitutionality of delegated legislation, particularly through the ultra vires doctrine and the reasonableness test.
- The establishment of specialized administrative law benches in the High Courts and Supreme Court could expedite judicial scrutiny of delegated legislation.

#### 5. Institutionalizing Periodic Review of Delegated Legislation

- Judicial precedents (*Agricultural Market Committee v. Shalimar Chemical Works Ltd., 1997*; <sup>70</sup> *General Officer Commanding v. Subhash Chandra Yadav, 1988*)<sup>71</sup> highlight the necessity of removing obsolete or unreasonable rules.
- International best practices, such as the UK's Sunset Clause Mechanism and the **Regulatory Flexibility Act, 1980 (US)**<sup>72</sup>, provide effective models for systematic legislative review.

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<sup>67</sup> Schechter Poultry Corp. v. United States, 1935

<sup>68</sup> Transferred Case (Civil) No. 229 of 2020

<sup>69</sup> CIVIL APPEAL NO. 2912 OF 2022 [Arising out of Special Leave Petition (Civil) No.26855 of 2018]

<sup>70</sup> 1997 (5) SCC 516

<sup>71</sup> 1988 AIR 876

<sup>72</sup> Regulatory Flexibility Act, 1980 (US)

- To eliminate outdated or excessive regulations, a statutory review mechanism should be introduced, ensuring that all delegated legislation undergoes periodic reassessment.

## **Conclusion**

Delegated legislation remains an essential tool for modern governance, enabling the executive to implement legislative intent efficiently while responding to complex and evolving administrative challenges. However, its legitimacy hinges on ensuring that delegation does not compromise democratic accountability, legislative supremacy, or constitutional principles. Judicial scrutiny has played a crucial role in shaping the permissible contours of delegated legislation, reinforcing the doctrine that while delegation is necessary, it cannot result in an abdication of legislative responsibility.

The evolving jurisprudence in India demonstrates a commitment to balancing flexibility with accountability. Courts have consistently underscored the need for clear statutory limits, adherence to legislative intent, and procedural safeguards against excessive delegation. Recent rulings have emphasized transparency, public participation, and parliamentary oversight as essential mechanisms for maintaining the democratic legitimacy of delegated legislation.

Moving forward, a structured approach to delegated legislation is imperative. Mandatory public consultation, enhanced parliamentary scrutiny, precise delegation clauses in parent acts, robust judicial oversight, and periodic review mechanisms are essential reforms to ensure that delegation serves as an instrument of good governance rather than a means of executive overreach. Comparative legal frameworks offer valuable insights into best practices that India can adopt to refine its regulatory process.

Ultimately, the legitimacy of delegated legislation will depend on the interplay between the legislature, executive, and judiciary. While the legislature must define clear delegation boundaries, the executive must exercise its rule-making powers responsibly, and the judiciary must remain vigilant in preventing constitutional transgressions. By institutionalizing safeguards and strengthening oversight mechanisms, delegated legislation can continue to function as an effective governance tool without undermining democratic values and the separation of powers.