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## ANALYSIS ON DELEGATED LEGISLATION

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### ABSTRACT

This paper examines what is delegated legislation, the constitutionality of the same. It is an act of entrusting a person with the power or empowering him to act on behalf of that person who has given him that power or to act as his agent or representative the importance of the delegation and how it can be controlled. The purpose and use of the delegation of legislation. The three ways in which the delegation can be controlled. This article also talks about the necessity of the delegation in the 21<sup>st</sup> century.

### INTRODUCTION

Delegated legislation is one of the most contentious issues. The acclaimed four pillars of Indian democracy are said to be the legislature, the executive, the judiciary, and the press. The constitution gives these pillars the authority not to interfere in the affairs of others. According to the Constitution, the legislative branch has legislative powers, while the executive branch has the authority to carry out laws. Similarly, the Judiciary has the authority to settle disputes and administer justice.

In contrast to this increased legislative activity, legislatures do not have enough time to legislate on every minor detail. They have limited themselves to policy matters, leaving the Executive with a large amount of authority to make rules to carry out the Legislature's purposes. The system of delegated legislation comes to mind in such situations. As a result, delegation is required and is sought to be justified on the basis of flexibility, adaptability, and speed.

Delegation according to Black's law means "The transfer of authority by one person to another; the act of making or commissioning a delegate. The whole body of delegates or representatives sent to a convention or assembly from one district, place, or political unit are collectively spoken of as a delegation"<sup>1</sup>. Parliament, through an Act of Parliament, can delegate authority

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<sup>1</sup> Black's law dictionary, DELEGATION Definition & Meaning - Black's Law Dictionary (thelawdictionary.org)

to another person or body. An Act of Parliament establishes the system of a specific or particular law and typically includes an outline of the Act's purpose. By delegating legislation from Parliament to the Executive or any subordinate, different people or bodies are empowered to add more details to an Act of Parliament. Along these lines, Parliament, through essential enactment, authorises others to make laws and guidelines through delegated legislation.

The enactment made by an authorised person must be justified in the Act of Parliament. Although delegated legislation is not specifically mentioned in the Indian Constitution, it can be understood by interpreting Article 312<sup>2</sup> of the given Constitution. This Article empowers the Rajya Sabha to establish a new branch of the All-India Service with a two-thirds majority vote. This means that some legislative powers will be delegated to the new All India Service recruiter. There are numerous cases in which delegated legislation under the Indian constitution can be understood.

## CONSTITUTIONALITY OF THE DELEGATED LEGISLATION

It basically means the limits that are permissible within a country's Constitution through which the Legislature can delegate its power of rulemaking to other administrative agencies. The goal of expanding the government's power is to deal with socioeconomic issues.

In the case of *Lachmi Narain v. Union of India*<sup>3</sup>, the court held “the notification issued by the Central Government is beyond its power conferred on it by Section 2 of the Union Territories (Laws) Act, 1950 and in consequence of any type of notification issued by the Central Government is invalid and ineffective.”

In the case of *Re Delhi Laws Act case*<sup>4</sup>, the Court considered the validity of a statute with respect to delegated legislation, the court held that “The Parliament can delegate its legislative power to any extent subject to the condition or limitation that it must not efface itself or abdicate its powers. The Parliament could not delegate to another agency its ‘essential’ legislative function, which implied policy formulation and enactment of policy it into a binding rule of conduct”. Currently there is limit on delegation of power and ancillary function can also be delegated.

## CONTROL OF DELEGATED LEGISLATION

The delegated legislation can be controlled in three ways: -

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<sup>2</sup> Indian Const. art 312.

<sup>3</sup> AIR 1976 SC 714.

<sup>4</sup> AIR 1951 SC 332.

- a) Parliamentary or legislative control
- b) Judicial control
- c) Executive or Administrative control

**a) PARLIAMENTARY OR LEGISLATIVE CONTROL:**

Legislation is a function of the legislature in parliamentary democracy, and it is not only the right but also the duty of the legislature to monitor its agents' performance. It is true that, as a result of delegation of power and general standards of control, judicial control has diminished and shrunk in scope.

It is further divided into two parts:

- I. **Direct Control:** Laying is an important and necessary aspect under direct control, and it is laid down as required, which means that after making the rule, it should be presented to Parliament. It is divided into three parts based on the degree of control required.

Laying is of three types:

- ☐ Simple Laying
- ☐ Negative Laying
- ☐ Affirmative Laying

- II. **Indirect Control:** Parliament and its committees exercise this control. Subordinate legislation is another term for this type of committee. The committee's main task is to determine whether the rules are in accordance with the general purpose of the act. It precludes the court's jurisdiction in direct or indirect ways. Whether or not it has a retroactive effect. Whether it protects or undermines the Natural Justice Principle. The expenditure is from the Consolidated Fund.

**b) PROCEDURAL AND EXECUTIVE CONTROL:**

Procedural control means that under the Parent Act, certain guidelines must be followed regardless of whether it is mandatory or not. In the case of *Raza Buland Sugar co. V. Rampur Municipal Council*<sup>5</sup>, the court gave 4 parameter which were

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<sup>5</sup> 1965 AIR 895.

Scheme of the Act, Intention of Legislature, Language used for drafting purpose, Inconvenience caused to the public at large scale.

**c) JUDICIAL CONTROL:**

The rule of law was improved by judicial review. The court must ensure that the delegation of power falls within the parameters of the constitution. Judicial review is more effective because the court does not recommend but clearly overturns a rule that is ultra vires in nature.

In the case of *Air India v. Nargesh Meerza*<sup>6</sup>, “Air India, a state-owned company, required female flight attendants to retire under three circumstances: (1) upon reaching 35 years of age, (2) upon getting married, or (3) upon first pregnancy. The same rules were not applicable to male attendants. The Court struck the rules down, holding that these requirements constituted official arbitrariness and hostile discrimination in violation of Article 14.”

**DELEGATED LEGISLATION IN 21<sup>ST</sup> CENTURY**

Delegation does not specify the person or persons on behalf of the state government, it means anyone including any subordinate officers. Delegation under Minimum Wages Act 2019, here in the section 5<sup>7</sup> for example it has been clearly stated that employer should give minimum wages not less than set by the appropriate government, whereas in section 9<sup>8</sup>, it has been stated that minimum wage should not be less than National Floor wage which is to be decided by the central government. Here we can see the legislation have delegated power to the appropriate government so as to find the better solution for the problem, delegating the legislation can be useful in the future acts as well, in other words we can say that supposedly if central government to pass a law which can be used as bench mark or least the government should follow and then give power to the respected appropriate government, so as they can set the rules and regulations according to the requirement in there areas, for example in rural area the minimum wages can be less than of the workers working in metropolitan cities. In the case of *Edward Mills V. The State of Ajmer*<sup>9</sup>, the supreme court held that “the appropriate Government after giving by notification in the Official Gazette not less than three months' notice of its intention to do so, may, by like notification, add to either part of the Schedule any employment

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<sup>6</sup> [1978] 2 SCR 621.

<sup>7</sup> The Code On Wages, 2019, § 5, No. 29, Acts of Parliament 1970 (India).

<sup>8</sup> The Code On Wages, 2019, § 9, No. 29, Acts of Parliament 1970 (India).

<sup>9</sup> [1955] 1 SCR 735.

in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and there- upon the Schedule shall in its application to the State be deemed to be amended accordingly.”

In the case of *Inder Singh v. State of Rajasthan*<sup>10</sup> the apex court held that, "The reason for upholding a legislative provision authorising an outside authority to bring an Act into force at such time as it may determine is that it must depend on the facts as they may exist at a given point of time whether the law should then be made to operate, and that the decision of such an issue is best left to an executive authority”.

## CONCLUSION AND OBSERVATION

According to me it is an abdication of power by legislators and an escape from duty imposed on them by the voters of democracy. It is an excuse for legislators, a shield for administrators, and a challenge to constitutional purists. It is simple to take sides in the debate over delegated legislation. It is lauded as a necessity and regarded as unavoidable in a world where social, economic, technological, psychological, and administrative speed outpaces the spacious and tranquil traditional legislative ideals and processes.

The Indian House of People also has a Subordinate Legislation Committee. That Committee's first report included two useful recommendations: -

- i. Bills containing proposals for delegation of legislative powers must always be accompanied by a memorandum outlining the specifics and scope of the proposals.
- ii. In the provisions delegating legislative powers in various Acts, uniformity should be ensured.

Delegated or subordinate legislation refers to rules of law enacted under the authority of an Act of Parliament. Despite the fact that the law-making body has the authority to make laws, it may delegate that authority to other bodies or individuals through a resolution. The Enabling Act is the resolution that delegated such authority. The Enabling Act establishes broad rules, and the delegated authority institutes nitty-gritty principles.

When parliamentary control overlaps with delegated legislation, it is necessary for the committee of parliament to be strong enough and separate laws to be made and passed that provide a uniform rule for laying down and publication purposes. A committee must have a

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<sup>10</sup> AIR 1957 SC 510.

special body to examine whether the delegated work is being done correctly and effectively. To avoid chaos in the system, all three organs should focus on their work and not interrupt it unnecessarily.