JUDICIAL CONTROL OVER DELEGATED LEGISLATION

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ABSTRACT

In modern governance, the complexity of state functions in their broad sense has led to the decentralization of legislative powers. This is because delegated legislation has assigned the task of filling the details of the statutes enacted by legislative branch to the executive branch or administrative bodies. This method is more flexible and effective because governments can promptly meet technical and specific needs of different sectors while avoiding constant changes in legislation itself. Nevertheless, such delegation is not without dangers such as the danger of abuse, unreasonable decisions, and violation of the provisions of the constitution. The public accountability and the rule of law are two aspects that are maintained primarily by means of the judicial control of the delegated legislation. The judicial oversight plays a major role of ensuring that the executive exercises the powers vested under the enabling statute and in a legal, proportional and reasonable manner. This paper aims at discussing delegated legislation, why there is a need for judicial control, principles of such control and evaluating the level of success of courts in regulating exercise of delegated legislative powers.

Keywords: Judicial control, Delegated legislation, Legislature etc.

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1. INTRODUCTION

In the contemporary democratic system, it is the elected legislative branch of the government that work in the Parliament or in the State legislative assemblies. However, as the administrative functions became more sophisticated, and as the legislatures realized that the specialized regulation is needed to address ever more specific situations, the legislatures can no longer provide detailed and exhaustive rules for everything. The present-day financial world, business and industry, health, and information technology have made governments to adopt flexibility in their policies. This necessity has led to the decentralization of the legislative powers whereby some of the legislation authority is delegated to the executive arm of government or to other administrative departments, this is referred to as delegated legislation or subordinate legislation.

Delegated legislation therefore means laws or rules made by any other authority other than the legislative assembly as a result of power conferred on the authority by an act (enabling statute) of Parliament. In the primary legislation, the legislature lays down the framework and goals, but to operationalize these guidelines, rules were framed through delegated legislation. Implementing this mechanism means that the executive can address technicality, procedural or regional issues without having to alter the main instrument. For instance, the regulatory agencies or ministries can be empowered to make orders rules or bylaws that can be as elastic as to include the new development or change that may be prevailing in the environment**.**

In almost all the nations the practice of delegating some legislative powers to the executive is used at large scale however it must be within permissible limits as it carries with it the possible danger of abuse of legislative powers by the executive. Therefore, "today the question is not whether delegated legislation is desirable or not, but is what controls and safeguards can be introduced so that the power conferred is not misused or misapplied".[3] The judiciary has a very important role to play in mitigating these risks through the judicial control mechanism of delegated legislation. Judicial review demands that delegated authorities are held to account and that the laws they create do not violate the constitution. This control is exerted by courts through compliance with enabling statute, procedural consistency, acknowledgement of rights and natural justice. Therefore, the direct control of delegated legislation by the judiciary serves as a check on the executive branch of the government and ensures that the exercise of legislative

[3] *Committee on Subordinate Legislation, Third report* 16 (First Lok Sabha 1954)

powers by the subordinate authorities is legitimate and transparent and is done democratically. Therefore, the over sight function of the courts keeps the constitutionality and the rule of law while exercising power over the delegated legislation in the modern systems of governance.

The control of delegated legislation is well developed in many of the legal systems as practiced in the common law jurisdictions such as India and United Kingdom. This paper discusses these principles, the judicial doctrines that apply to the control of delegated legislation. It also discusses how those doctrines have been implemented in practice using examples of important case laws. The paper also considers the issues of inadequate judicial review and some difficulties that courts can encounter in the case of weighing flexibility of the executive power on the one hand and the rights of individuals on the other hand.

The Control over delegated legislation is exercised at two levels : Firstly, at the level of delegation of legislative power itself by the legislature to the executive through the mechanism of legislative and procedural control over delegated legislation; and secondly at the level of exercise of delegated power by the executive by providing safeguards through the mechanism of judicial control over delegated legislation.

1.1 Review of Literature

a) **Prof. I.P. Massey** in his book[4] provides a comprehensive examination of the concept of judicial control over delegated legislation in India. Massey's work is significant in its depth, covering both the theoretical underpinnings and practical applications of judicial control within administrative law. The doctrine of ultra vires is central to Massey's discussion on judicial control. He explains that this doctrine is a powerful judicial tool used to assess whether delegated legislation exceeds the scope of authority granted by the parent statute. Massey critically examines excessive delegation, where legislative bodies transfer essential law-making functions to the executive without adequate guidelines.

b) **C.K. Takwani** in his book[5] provides an insightful and comprehensive examination of judicial control over delegated legislation in India. Author begins by laying out the framework for delegated legislation, explaining how it allows administrative bodies to create rules and regulations within the scope defined by the parent statute. He emphasizes the importance of

[4] I.P. Massey, *Administrative Law* (9th Edition, Eastern Book Company 2020)
[5] C.K. Takwani, *Lectures on Administrative Law* (7th Edition, Eastern Book Company 2021)

judicial review in preventing delegated legislation from infringing upon fundamental rights. The principles of reasonableness and proportionality are key elements in his examination of judicial control over delegated legislation.

c) **Dr. J.J. R. Upadhyaya** in his book[6] emphasizes that while delegation is essential in light of complex administrative needs, it must be limited and controlled to prevent the dilution of democratic principles. He distinguishes between substantive ultra vires—where the content of the delegated legislation exceeds the powers granted by the enabling statute—and procedural ultra vires—where an administrative body fails to follow the procedural requirements set out in the parent statute. Dr. Upadhyaya's work highlights the role of judicial control in protecting fundamental rights from excessive or arbitrary delegated legislation.

d) **Samridhi M** in his article[7] provides an in-depth examination of the judicial mechanisms that oversee and regulate the exercise of delegated powers by administrative bodies in India. This work is particularly valuable for its analytical approach to the principles, doctrines, and judicial decisions that shape judicial control, as well as the challenges and evolving trends in this area.

1.2 Research objectives

a) To analyze the constitutionality of the delegated legislation in India and the limitations imposed on delegation.

b) To investigate the application of the ultra vires doctrine as a tool for judicial control over delegated legislation.

c) To evaluate the impact of doctrine like excessive delegation on the judiciary's approach to controlling delegated legislation in India.

1.3 Research Questions

a) What are the constitutional limits on the delegation of legislative powers to the executive or

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[6] Dr. J.J. R. Upadhyaya, *Administrative Law* (11th Edition, Central Law Agency 2019)

[7] Samridhi M , *Judicial Control over Delegated Legislation,* Law Octopus, available at https://lawctopus.com/catalogue/clat-pg/judicial-control-on-delegated-legislation/ (last accessed 20 October 2024).

administrative bodies in India ?

b) What role does the doctrine of ultra vires play in maintaining the legality and constitutionality of delegated legislation ?

c) How do Indian courts interpret the balance between administrative flexibility and legislative accountability in cases of delegated legislation ?

1.4 Research Methodology

This study involves doctrinal method of research. It includes the analysis of judicial verdicts available on the issue and it also deals with the opinions of the judges, and lawyers expressed in the decided cases. The methodology adopted by researcher is descriptive and analytical and will not include empirical research.

2. CONSTITUTIONALITY OF DELEGATED LEGISLATION

The Privy Council considered the issue of constitutionality in the well-known case of R. v. Burah[8] where an officer chosen by the Bengal Lieutenant Governor was given the authority to administer both civil and criminal matters after the Indian legislature passed an Act in 1869 removing Garo Hills from Bengal's civil and criminal jurisdiction. Section 9 of the Act also gave the Lieutenant Governor the authority to apply any of its provisions to the Khasi and Jaintia Hills with incidental modifications. The Commissioner of Khasi and Jaintia Hills found one Burah guilty of murder and sentenced him to death.

The Calcutta High court struck down the Sec.9 of the act as unconstitutional however on appeal the privy council overturned the Calcutta High Court's ruling and maintained Section 9 constitutionality on the grounds that it is only a conditional legislation. There were two possible interpretations the Privy Council's decision. According to one interpretation, the delegation of legislative functions is unrestricted because the Indian legislature is not a representative of the British Parliament. The alternative interpretation maintained that delegation of legislative authority is not acceptable because the Council has only approved conditional legislation. However, there remained uncertainty on the question of permissible limits of delegation.

[8] *R v. Burah,* (1879) 4 ILR Cal 172.

After independence, legislatures in India have been deemed to have broad delegation authority in keeping with their sovereign nature. There are, however, restrictions on this power. Essential legislative functions, such as deciding on a legislative policy and formally enacting it into a binding code of conduct, cannot be delegated by the Legislature. There is no "unanalyzed and uncontrolled power" that the Legislature can assign. The delegation is only legitimate when the legislative policy and the rules governing its implementation are sufficiently established, and the delegate is only authorized to carry out the policy in accordance with the rules established by the Legislature. It is necessary to consider the subject matter, the scheme, the provisions of the statute, including its preamble, and the circumstances and facts surrounding the enactment of the statute when determining whether any particular legislation suffers from excessive delegation.[9]

In *Kishan Prakash Sharma v. Union of India*[10], the Supreme Court's Constitution Bench established the standard for determining the constitutional boundaries of delegated legislation. In this case, the Supreme Court ruled that the Legislature must define the boundaries of the authority granted by stating the law's policy and establishing guidelines for those who have been given the authority to carry it out. As a result, the delegation is only legitimate when the legislative policy and the rules implementing it are sufficiently established, and the delegate is only authorized to carry out the policy in accordance with the rules established by the Legislature. However, Mathew J. in his dissenting view in *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST*[11] observed that to ascertain whether delegated legislation is constitutional, he proposed a novel test. He contends that a legislature does not forfeit its legislative role as long as it retains the ability to revoke the enabling Act that grants it the authority to enact laws; as a result, the delegation must be considered as valid regardless howsoever broad and general the delegation may be. However, the majority, led by Khanna J, reaffirmed the well-known "policy and guidelines" test, but they did not agree with this “abdication test”.

In *State of Rajasthan v. Basant Nahata*[12], the Supreme Court ruled that one aspect of the legislative function is the requirement that the legislature transfer its authority to the executive. Under article 245 of the Constitution, it is a component part of the legislative power overall. However, this kind of power transfer cannot be broad, unconsidered, or undirected. The

[9] I.P. Massey, *Administrative Law,* 94 (9th Edition, Eastern Book Company 2020).
[10] *Kishan Prakash Sharma v. Union of India*, AIR 2001 SC 1493 (India).
[11] *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST*, AIR 1974 SC 1660 (India).
[12] *State of Rajasthan v. Basant Nahata*, AIR 2005 SC 3401 (India).

Legislature, while delegating such power is required to lay down the criteria or standard so as to enable the delegate to act within the framework of the statute. The disclosure of the principle guiding the exercise of legislative power is mandatory. It is also common knowledge that essential legislative functions cannot be delegated.

It is now an established principle that courts will invalidate a legislation on the grounds of delegation of an essential legislative function or of granting the delegate unguided, uncontrolled, and vague powers unless and until regard being had to the preamble of the Act and other statutory provisions, if they offer a useful means of determining the meaning of the offending statute.

3. NEED FOR JUDICIAL CONTROL

The delegation of legislation power has however certain limitations, mainly because of the principle of the separation of powers, where legislation is the preserve of the legislature. There is the need for judicial control where delegated legislation is so produced as to be unconstitutional or beyond the enabling act or where it encroaches on constitutional rights.

The main justifications for judicial control over delegated legislation include:

a) Preserving the Rule of Law: Making sure that no body including the executive body, oversteps their legally allowed power.

b) Preventing Abuse of Power: Limiting the discretionary exercise of powers which have been delegated.

c) Protecting Fundamental Rights: Making certain that delegated legislation is not undertaken in a manner that encroaches on the rights of citizens where the legislation has not been properly made.

The importance of judicial control over delegated legislation lies in its ability to make sure that delegated power does not exceed the limits of powers delegated to the authorities and protect essential civil liberties from being negated by the over-prescribing or the inadequate and ambiguous writing of regulations. It is an important means to check the concentration of absolute authority in the executive department, establish the relationship of checks and balances between the three branches of government.

4. JUDICIAL CONTROL AND DOCTRINE OF ULTRA VIRES

Judicial control becomes an important safeguard in any constitutional democracy where the powers are delegated to the executive or administrative bodies to ensure that they are exercised within legal and constitutional framework. This task is accomplished through the power of the judiciary to review delegated legislation and set it aside (as being unlawful) if it exceeds the authority granted by the legislature. The control of courts over the exercise of this power is based on several doctrines and principles among them being the ultra-vires doctrine. Ultra vires simply translates to 'beyond power'. This doctrine operates on two levels:

(a) Substantive ultra vires and

(b) Procedural ultra vires.

Substantive ultra vires postulates that if any delegated authority exercises powers more than the powers provided by the enabling statute, the exercise is unlawful. It has been rightly described as 'the central principle' and 'foundation of large part of administrative law'.[13] This ensures that subordinate legislation adheres strictly to the limits set by the parent act and does not violate constitutional or legal principles. In such cases, the delegated legislation is declared null and void because it encroaches into areas that the legislature never intended to be delegated to the non-binding control of the executive. For instance, if under a statute the administrative authority is given the mandate to make traffic laws and the authority comes up with rules concerning taxes, such rules are ultra vires in substance because taxing falls outside the authority provided under the statute.

Procedural ultra vires on the other hand occurs where the authority empowered to make delegated legislation has not complied with the procedures that are set out in the enabling act or by the general law. The enabling act may stipulate certain mandatory procedures that must be complied with in the preparation of delegated legislation, which include notifying other agencies, presenting the rules to parliament or giving prior notice to the affected persons. Should these procedures not be followed, then the delegated legislation is procedurally ultra vires and so unconstitutional.

The effect of declaring a legal instrument ultra vires is that it is null and void and has no legal

[13] Wade, *Administrative law*, 1988, p.39.

effect. It has no legal leg to stand on.[14] It is void ab initio and cannot be ratified later on.[15]

Judicial control over delegated legislation is exercised by applying the doctrine of ultra vires in a number of circumstances.[16] Some of them are -

(i) Where Enabling Act is ultra vires the constitution :

The Constitution in Art.246 read with Schedule VII prescribes the express limits within which the legislature should act. The State Legislature and the Parliament each have a certain amount of legislative authority. The Constitution lays forth their authority in very clear terms. Regarding items on the Union List and the Concurrent List, the Indian Parliament has the authority to enact laws for the entire country or any portion of it. The Union is vested with the residuary powers. Any Act of Parliament that infringes upon a topic included in the State List is not tenable and invalid.

Moreover, Art. 13(3)(a) of Indian Constitution defines the term 'law' as including order, rules, bye laws, regulation and notification etc. clearly pointing that subordinate legislation must also be consistent with Part III of Constitution. If the enabling act itself violates the express or implied constitutional limits or rights than the parent act is declared ultra vires and consequently any rules or regulation made thereunder would also be invalid. The legislature's act must be consistent with the constitutional rights for instance no legislature should enact a law violative of commerce clause(Art.301), right to property (Art.300-A) or Right to vote etc. If it does so than it may be a ground to challenge the constitutionality of parent act.

As far as implied constitutional limits are concerned, the case of *Re Delhi Laws Act case*[17] and *Harishankar Bangla v. State of Madhya Pradesh*[18] enunciated these limits in which the court while upholding the validity of delegated legislation held that the legislature cannot delegate its essential legislative function. Essential functions involve the laying down of policy and enacting the policy into binding rule of conduct. Legislature can only delegate its ancillary functions and cannot abdicate itself by creating a parallel legislative body. Sometimes, excessive delegation—that is, delegation without setting any boundaries, standards, or limits—

[14] *Ibid,* p.41.
[15] *Marathawad University v. Sheshrao*, AIR 1989 SC 1582 (India).
[16] J. Venkataramiah, in *Indian Express Newspaper v. Union of India,* AIR 1985 SC 515 (India).
[17] In re *Delhi Laws Act case,* AIR 1951 SC 332 (India).
[18] *Harishankar Bangla v. State of Madhya Pradesh,* AIR 1954 SC 465 (India).

makes some provisions of an Act unconstitutional. For example, Section 3(d) of the Drugs and Magic Remedies (Objectionable Advertisement) Act was deemed to be beyond the powers in the case of *Hamdard Dawakhana v. Union of India*[19]. The Act as a whole was upheld because the remaining provisions were held to be valid legal provisions. The Court held that the language used in Section 3(d) gives the Executive unrestrained and unchanneled power without establishing any specific standards or guidelines. The scope of the exercise of administrative authority powers must be clearly defined. It is not appropriate for delegation to be so vague as to imply a relinquishment of the legislative role.

(ii) Where Delegated legislation is ultra vires the constitution :

It is possible that although the parent act is intra vires the constitution and the delegated legislation is in conformity with enabling act but ultra vires the constitution, in such condition the delegated legislation is null and void. In countries with written constitutions like India, Australia, Canada, USA this mode of judicial review is used frequently when delegated legislation violates fundamental rights. However, in the United Kingdom, there is no fundamental law or written Constitution to which legislative acts must adhere. As a result, legislative grants made by the British Parliament are not subject to this mode of control.

In *Narendra Kumar v. Union of India*[20], Apex court held that even if parent act is constitutional, the validity of delegated legislation can still be challenged on the ground that the law cannot be presumed to authorize anything which may be in contravention of the constitution. For instance, in *Dwarka Prasad v. State of Uttar Pradesh*[21] the validity of U.P. Control Order made under Essential Supplies (Temporary Powers) Act, 1946 was in question. Clause 3(2)(b) of the Order provides that the State Coal Controller can exempt any person from the requirement of license to carry on business in coal. The Court held that although the parent act is constitutional but clause 3(2)(b) was ultra vires the Art.19(1)(g) as it confers arbitrary powers in the hands of executive thereby constituting unreasonable restriction on right to carry on trade and business.

Similarly, in *Himmat v. Commissioner of Police*[22] a rule made under Bombay Police Act, 1951 providing that no public meeting will be organized without the permission of the Commissioner was held ultra vires of Art. 19(1)(a) as imposing unreasonable restriction on freedom of speech

[19] *Hamdard Dawakhana v. Union of India,* AIR 1960 SC 554 (India).
[20] *Narendra Kumar v. Union of India*, AIR, 1960 SC 430 (India).
[21] *Dwarka Prasad v. State of Uttar Pradesh,* AIR 1954 SC 224 (India).
[22] *Himmat v. Commissioner of Police*, AIR 1973 SC 87 (India).

and expression. The Supreme Court invalidated a notification issued under the M.P. Grazing Rules created under the Forest Act, 1927 in the case of *Lakshman v. State of M.P*[23]. 'Foreign cattle' were allowed to graze for a very short time, and the regulations stipulated rates of charges that were both prohibitive and excessive. Cattle belonging to non-M.P. residents were considered foreign cattle. These cattle typically travel through multiple States. Because the Notification violated Article 301, 19(l)(g), 19(l)(e), and Article 14, it was deemed to be invalid.

Derivative Immunity: In *Vasanlal Maganbhai v. State of Bombay*[24] a question arose for consideration before apex court that if the parent act is placed in IXth Schedule of Constitution and protected from judicial review so whether the delegated legislation made under that parent act can be challenged as being ultra vires of Constitution. The court answered in Negative on ground of derivative immunity theory. However, in *Prag Ice and Oil Mills v. Union of India*[25] the court changed its earlier stance and held that even if parent act cannot be challenged on account of its placement in IXth Schedule, the delegated legislation made under parent act can still be challenged if it violates any provision of constitution. Although after this judgment, Apex court in *Waman Rao & Ors. V. Union of India* [26] held that laws placed in IXth Schedule does not enjoy unlimited immunity and can still be challenged on ground of violation of basic structure of constitution.

(iii) Where Delegated Legislation is ultra vires the parent act:

Delegated legislation becomes ultra vires the parent (enabling) act when it oversteps the authority or infringe the provisions of the statute that provided the authority to make such legislation. Parent act or the enabling statute, is the primary legislation enacted by the legislature that assigns specific rule-making authorities to an administrative authority or the executive branch. But this is not entirely true and as earlier stated delegated legislation must operate within the confines of the limitations, purpose and procedural provisions of the parent enactment. If such limits are crossed the delegated legislation is rendered unlawful and can be set aside by the courts. Subordinate legislation does not enjoy the same degree of immunity as enjoyed by statute passed by legislature and therefore it must be in conformity with the parent or enabling act.

[23] *Lakshman v. State of M.P.*, (1983) 3 SCC 275 (India).
[24] *Vasanlal Maganbhai v. State of Bombay,* AIR 1961 SC 4 (India).
[25] *Prag Ice and Oil Mills v. Union of India*, AIR 1978 SC 1296 (India).
[26] *Waman Rao & Ors. V. Union of India*, AIR 1981 SC 271 (India).

In *Additional District Magistrate (Rev.) v. Sri Ram*[27] the apex court observed that, "the conferment of rule-making power by an act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling act." Further in *Dwarka Nath v. Municipal Corporation*[28] in which the Rule 32 made under Sec.23(1) of Prevention of Food Adulteration Act, 1954 provides that there shall be specified on every label name and business address of the manufacturer, batch number or code number either in Hindi or English so that public is not misled as to quantity and quality of article. The petitioner, a manufacturer of Ghee tins specifies particulars as 'Mohan Ghee Laboratories, Delhi-5'. Petitioner contended that Rule 32 is in excess of power of enabling act which forbids purpose only to ensure 'quantity and quality'. Apex court held that Rule 32 as ultra vires of the act as it conferred excessive powers on the central government.

Similarly, in *Mohd. Yasin v. Town Area Committee*[29] the enabling act i.e. U.P. Town Area Act 1914 permits the municipality to charge fee only for the use and occupation of some property of committee but instead of this the town area committee made bylaw that imposes levy on wholesalers irrespective of any use by them. The petitioner challenged this bye-law on the ground that it was arbitrary**,** unreasonable**,** and ultra vires the powers granted to the Town Area Committee by the enabling statute, i.e., the U.P. Town Areas Act, 1914. The Court held the bye law as ultra vires in excess of power conferred by the parent act.

However, the question here is that when it can be said that a delegated legislation is repugnant to parent act or any general law ? The answer to this question was still not clear but Channel, L.J. observed in *White v. Morley*[30] that, "A bye-law is not bad because it deals with something that is not dealt with by general law. But it must not alter the general law by making that lawful which the general law makes unlawful; or that unlawful which the general law makes lawful". Further, J. Krishna Iyer[31] states, "a law has to be adjudged for its constitutionality by the generality of cases it covers, not by the frecks and exceptions, it's martyrs."

In its landmark judgment *V. Sundeer v. E r Council of India*[32] the Supreme court declared the Bar Council of India Training Rules, 1995 made under powers conferred by Sec. 49 of

[27] *Additional District Magistrate (Rev.) v. Sri Ram.,* (2000) 5 SCC 452 (India).
[28] *Dwarka Nath v. Municipal Corporation*, AIR 1971 SC 1844 (India).
[29] *Mohd. Yasin v. Town Area Committee*, AIR 1952 SC 115 (India).
[30] *White v. Morley*, (1899) 1 Q.B. 34 at p.39.
[31] *Joshi v. Anant Mills,* AIR 1977 SC 2279 (India).
[32] *V. Sundeer v. E r Council of India*, (1999) 3 SCC 176 (India).

Advocates Act, 1961 to carry its functions as ultra vires of the parent act i.e. Advocates Act 1961 as the rules didn't have any relation with the functions provided under the act. The court said that the rules must have a statutory beg to hang on them otherwise they will become stillborn.

The Court has also adopted liberal attitude in certain cases while dealing with the similar matters. For instance, in *Tata iron & steel co. v. Workmen*[33] where the Sec. 5 of the parent act i.e. Coal Mines Provident Fund and Bonus Scheme Act, 1948 gives power bonus scheme for employees to the central government but instead of it the central govt. established a quasi-judicial tribunal to decide some disputes and the same was contended before the apex court. The court rejecting the contention said that, "it was a matter of detail which is subsidiary or ancillary to the purpose of legislative measure for implementing the scheme." So long a rule has rational nexus with the object and purpose of a statute, the court will not interfere in the domain of policy matters which is left entirely to the wisdom of legislature.[34]

Delegated legislation can also be challenged on the ground that it fails to observe the mandatory procedural requirements specified in the parent act to be complied with while exercising law making power under it. For instance, in *Banwarilal Agarwalla v. State of Bihar*[35] , Sec.12 of Mines Act, 1952 provides that the central government shall consult the Mining Board established under the act before making any rules relating to subject matter of act but the central government made rules without any consultation from Mining Board therefore Apex court declared the rules so made in contravention of the act as invalid being ultra vires the procedure laid down in the parent act.

(iv) Unreasonable

Delegated legislation has to be made in a manner that is reasonable and proportional to the aim of the given legislation. In order to avoid overburdening of individuals or entities, the courts use the doctrine of proportionality concerning regulations made under the delegated legislation. As observed by De Smith[36], "there is no reason or principle why a manifestly statutory instrument should not be held to be ultra vires on that ground alone…."

[33] *Tata iron & steel co. v. Workmen*, AIR 1972 SC 1917 (India).
[34] Maharastra Board of S.H.S.E. v. Paritosh, AIR 1984 SC 1543.
[35] *Banwarilal Agarwalla v. State of Bihar*, AIR 1961 SC 849 (India).
[36] Garner, *Administrative Law*, 1985, p.72.

The landmark case on unreasonableness is of *Kruse v. Johnson*[37] where a bye law prohibiting any person from playing or singing in any public place or highway within 50 yards of any dwelling house was made by Kent County Council which was manifestly unjust and unreasonable therefore was declared ultra vires. In this case, C.J. Lord Russel propounded test of unreasonableness of delegated legislation in following words, "If, for instance, byelaws were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say, " Parliament never intended to give such authority to make such rules, they are unreasonable and ultra vires."

Similarly, in USA the delegated legislation can be challenged as being unreasonable under 14th amendment due process clause of the American Constitution. "Not only must a regulation, in order to be valid, be consistent with the statute, but it must be reasonable also."[38] However, in Australia, the courts do not recognize unreasonableness as a ground for challenging the validity of statutory regulation.

In India, in the beginning the court do not examine the reasonableness of a statutory rule. In *Mulchand v.Mukand*[39] the court was asked to hold Rule 36 made under the Bombay Co-operative Societies Act invalid on the ground that it was unreasonable. The court dismissed the argument, noting that a bye-law may but a statutory rule cannot be challenged on the grounds of unreasonableness. However, in light of some rulings made by the Supreme Court following the Maneka Gandhi case[40], logically, any administrative rule-making can be contested on the grounds that it is unreasonable. Since then the same principle as was in England and USA was adopted in this respect. The doctrine of unreasonableness has been based on Article 14 of the Indian constitution. In many cases supreme court observed that Article 14 enshrines the principle of reasonableness.[41]

In *Air India v. Nargesh Meerza*[42], the Court set aside the service regulation, which states for termination of services of a female air hostess employee on her first pregnancy. The Court held

[37] *Kruse v. Johnson*, 2 QB 91 UK (1898) .
[38] *F.C.C. v American Broadcasting Co.*, 347 US 284 (1954).
[39] *Mulchand v .Mukand*, AIR 1952 Bom 296 (India).
[40] *Maneka Gandhi v. Union of India.,* AIR 1978 SC 597.
[41] *E.P. Royappa v. State of Tamil Nadu,* (1974) 4 SCC 722.
[42] *Air India v. Nargesh Meerza*., AIR 1981 SC 1829 (India).

this regulation as most unreasonable and arbitrary and therefore violative of Article 14. Similarly, in *Council of Legal Aid and Advice v. Bar Council of India*[43] court held that Bar Council of India rules which exclude the person on attaining 45 years age from being enrolled as an advocate is grossly unjust and arbitrary thereby unreasonable and not tenable in eyes of law. Further in *Central Inland Water Transport Corporation v. Brojo Nath Ganguly*[44], a rule which provides for termination of services before the age of superannuation of permanent employee was declared unreasonable, opposed to public policy and Henry VIII Clause and therefore void.

However, in one regard, the courts must consider whether statutory rules and legislative acts are reasonable. Article 19 of the Constitution guarantees citizens certain freedoms. The freedoms are not unrestricted; in the public interest, the Legislature may impose reasonable limitations on these rights in general. The question of whether the limitations on freedom are reasonable rests with the court.

(v) Malafide (Bad Faith)

Delegated legislation may be declared to be beyond its powers if the body responsible for creating rules acts malafidely or with a hidden agenda (ulterior motives). However, there has never been a case in India where a statutory rule was declared unconstitutional due to malafide exercise of the rulemaking authority. However, the court would reject the rule if it were proven that the body responsible for creating the rules had ulterior motives.[45] The case of *A.K. Roy v. Union of India*[46] is worth mentioning in this regard where the court observed that not only a delegated legislation but a statute and even a constitutional amendment passed by competent legislature may be contended as being a malafide exercise of power.

The case of *DC Wadhwa vs State of Bihar*[47] is relevant to mention in this regard. In this case, The State of Bihar has long exercised the authority granted to the Governor by Article 213 of the Indian Constitution to enact ordinances. When the state legislature is not in session, the governor can use this authority to enact ordinances as a short-term solution to pressing issues. Bihar's practice, however, did not align with this constitutional intent. The main issue was

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[43] *Council of Legal Aid and Advice v. Bar Council of India*., (1995) 1 SCC 232 (India).
[44] *Central Inland Water Transport Corporation v. Brojo Nath Ganguly*, AIR 1986 SC 1571 (India).
[45] V. N. Shukla, Judicial Control of Delegated Legislation, J. Indian L. Inst. 959 (1969).
[46] *A.K. Roy v. Union of India*., AIR 1982 SC 710 (India).
[47] *DC Wadhwa vs State of Bihar*., AIR 1987 SC 579 (India).

whether the governor of Bihar could essentially assume the legislative role that belongs to the elected legislative assembly by continuing to promulgate ordinances indefinitely. This practice sparked worries that the executive was stealing the legislative branch's legislative authority.

The Supreme Court held that the authority to enact ordinances is a last resort meant for urgent situations when the legislature is not in session. This authority cannot be abused for political purposes or to get around the legislative process. The Court determined that it was unconstitutional to repeatedly promulgate ordinances without the approval of the legislature. These actions clearly show the malicious part of the government and were considered a violation of the constitutional provision since they undermined the separation of powers principle by enabling the executive branch to overreach and usurp the legislative function. Therefore, the Bihar Intermediate Education Council Ordinance, 1985 was declared unconstitutional, null and void by the Supreme Court. It ruled that the Bihar government's actions could not be justified as a lawful use of the authority granted to the governor by Article 213 of the Constitution. The Court called it a 'Fraud on the Constitution'.

In England, the courts have adopted the stance that a rule could be contested on the grounds that it was unrelated to the purpose for which the rule-making authority was granted, or on the grounds that the rule-making authority acted mala fide.[48] J. Clauson in *R v. Comptroller-General of Patents*[49] states that, "If on reading the order in council making the regulation, it seems in fact that it did not appear to his majesty to be necessary or expedient for the relevant purposes to make the regulation, I agree that on the face of the order, it would be inoperative."

5. LIMITATIONS OF JUDICIAL CONTROL

While judicial control is a vital check on delegated legislation, it also faces certain challenges and limitations:

A) Judicial Deference: Where economic or technical regulations are involved, courts accord substantial respect to the executive's, expertise. This may reduce the degree of judicial intervention especially where the matters involved are complicated, technical or of policy nature.

[48] Mc Eldowney v. Forde, [1969] 2 All E.R.1039 (H.L.)
[49] R. v. Comptroller Gen. of Patents,[1941] 2 K.B. 306 (C.A.)

B) Parliamentary Oversight: Like the ordinary legislation, the delegated legislation is also open to parliamentary control, which may reduce the chance of enormous judicial interference. Nonetheless, when the legislature's supervision is limited, judicial activation grows in importance.

C) Presumption of Validity: They have normally assumed that delegated legislation is legal unless proved to be otherwise. The onus of proof rests with the party opposing the legislation, and this can place great strain on trying to annul regulations unless there is substantial proof of ultra vires actions.

6. CONCLUSION

The rule of law and the avoidance of executive power abuse require that judicial control over delegated legislation be exercised cautiously. Courts are an important mechanism through which citizens' right are protected and the integrity of the legislative process maintained by the application of the doctrine of ultra vires and the principles of reasonableness, proportionality and natural justice. Courts can strike down as excessive or unreasonable delegated legislation, but also understand the importance of having some judicial oversight without upsetting the balance of respect for the executive's expertise in rule making.

However, legislative bodies should also make sure not to leave it too vague in the enabling statutes or leave it to delegated authorities so that the authorities of the delegation act within a defined and legal framework. Combining a strong system of parliamentary oversight with effective judicial review is therefore essential to ensuring accountability for the exercise of delegated powers.

Judicial control, parliamentary oversight, and administrative efficiency in their interplay help finding a balance between the flexibility of governance and the necessity of constitutional safeguards. So long as the courts keep their roles as the vigilant protectors of the Constitution and the individual liberties, delegated legislation can be an effective instrument of governance without weakening the fundamental premises of democracy, separation of powers and the rule of law.

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